

(2026) 02 DEL CK 1762

In the Delhi High Court

Case No : RFA(COMM) No. 50 Of 2023 and Civil Miscellaneous Application No. 14354 Of 2023

Bank Of Maharashtra

APPELLANT

Vs

Jai Kumar Bansal

RESPONDENT

Date of Decision : 20-02-2026

Acts Referred:

Transfer of Property Act, 1882 — Section 55, 55(1)(a)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(6)
Security Interest (Enforcement) Rules, 2002 — Rule 8(6)(a), 8(6)(f), 9(10)

Citation : (2026) 02 DEL CK 1762

Hon'ble Judges : Anil Kshetarpal, J; Amit Mahajan, J

Bench : Division Bench

Advocate : V.K. Gupta, Rohan Garg, Rohit Dutta, Shyam Kishor Maurya, Siddharth Dewalwar, Ananya Jain

Final Decision : Allowed

Judgement

Anil Kshetarpal, J

1. Through the present Appeal, the Appellant assails the correctness of the judgment and decree dated 31.01.2023 [hereinafter referred to as the Impugned Judgment] passed by the Commercial Court, whereby the suit filed by the Respondent [Plaintiff before the Commercial Court] was partly decreed in CS(COMM) No.2243/2019.

FACTUAL BACKGROUND:

2. The brief facts necessary for the adjudication of the present Appeal are that the Appellant Bank, acting as a secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as 'SARFAESI Act'], issued a Public Notice on 28.11.2018 inviting bids for the sale of properties situated at H-3, H-3A, and H-4, UPSIDA Industrial Area, Sikandrabad, Uttar Pradesh. The properties had

been given on lease by the U.P. State Industrial Development Authority (UPSIDA) to the Bank's borrower, M/s Ashoka Machine Tools International Pvt. Ltd., and served as collateral security for the repayment of dues.

3. On 28.11.2018, the Appellant issued a Public Notice for e-auction of the said properties. The notice unequivocally stipulated that the sale would be conducted on an "As is where is basis", "As is what is basis", and "Whatever there is basis". Relevant to this dispute, Clause 12 of the Terms and Conditions of the auction notice provided:

"...if any tax liability, penalty or any kind of charges are levied by any authority on such kind of sale then that is to be borne by the purchaser in addition to sale price. Also if any dues or penalty or any charges are due/levied on the property by any authority then it will also be borne by the purchaser in addition to sale price."

4. The Respondent participated in the e-auction held on 14.12.2018. The Respondent's bid of ₹ 6,07,12,000/- (Rupees Six Crore Seven Lakh Twelve Thousand Only) was declared successful. Following the confirmation of sale and payment of the full consideration, the Appellant Bank issued a Sale Certificate dated 29.12.2018. This certificate explicitly stated that the sale was free from all encumbrances "known to the secured creditor." Physical possession of the plots was delivered to the Respondent on 01.01.2019.

5. Trouble brewed when the Respondent approached UPSIDA for the mutation/transfer of the leasehold rights. Vide letters dated 15.05.2019, UPSIDA informed the Respondent that the transfer could only be regularized upon payment of outstanding dues, including arrears of lease rent and transfer charges totalling ₹ 25,06,846/-. These dues primarily pertained to the period prior to the auction sale.

6. The Respondent demanded that the Appellant Bank clear these liabilities. The Bank refused, citing the "As-Is" nature of the sale and the specific indemnity clause in the auction notice. Consequently, the Respondent paid the amount to UPSIDA under protest and instituted the subject suit for recovery. The Commercial Court held that the Bank was duty-bound to deliver the property free of all pre-sale encumbrances and that the "As-Is" clause did not absolve the Bank of its duty of disclosure.

CONTENTIONS ON BEHALF OF THE APPELLANT:

7. The Appellant has assailed the Impugned Judgment primarily on the following grounds:

i. Contractual Binding of 'As-Is' Terms: Learned counsel representing the Appellant submitted that the Commercial Court failed to appreciate that the Public Notice dated 28.11.2018 and the subsequent Sale Certificates were governed by the explicit conditions of "as is where is" and "what is where is" basis. Clause 13 of the auction terms specifically placed the onus on the bidders

to investigate the title, statutory dues, and encumbrances prior to participating in the bid. Having participated with full knowledge of these terms, the Respondent is contractually estopped from shifting the burden of pre-existing dues onto the Bank.

ii. Limitation of Disclosure: Learned counsel argued that under Section 55 of the Transfer of Property Act, 1882, a seller's duty is limited to disclosing material defects known to the seller. The Sale Certificate explicitly stated that the property was "free from all encumbrances known to the secured creditor." It is contended that any statutory dues or liabilities unknown to the Bank at the time of auction are the sole responsibility of the purchaser under the principle of caveat emptor.

iii. Statutory Finality under SARFAESI Act: Reliance was placed on Section 13(6) of the SARFAESI Act to contend that upon payment of the full sale price, all rights in the secured asset vest in the purchaser as if the transfer had been made by the owner. The Respondent, being a sophisticated commercial purchaser, had ample opportunity for due diligence. Counsel distinguished the present case from precedents where banks actively concealed known litigations, asserting that no such concealment or fraud has been proved in the present instance.

iv. Unconditional Acceptance: It was further urged that the Respondent accepted the Sale Certificates and took possession without any protest or reservation. Consequently, the transaction attained finality, and the Respondent cannot now seek to vary the terms of the concluded contract by demanding reimbursement for statutory charges.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

8. Per contra, learned counsel for the Respondent has supported the Impugned Judgment and contended as follows:

i. Non-Absolute Nature of 'As-Is' Clause: It is argued that the "as is where is" clause does not provide a blanket immunity to the secured creditor or authorize the suppression of material facts. Reliance was placed on the SARFAESI Rules, which mandate that the authorized officer must act fairly and disclose all known encumbrances in the sale notice. It is submitted that the Bank's declaration of the sale being "free from encumbrances" created a legitimate expectation of a clear and unburdened title.

ii. Duty of the Secured Creditor: Counsel submitted that the Appellant Bank, as a secured creditor in possession of the asset, was under a legal obligation to perform basic due diligence regarding outstanding statutory dues before inviting public bids. The failure to disclose substantial dues to authorities like UPSIDA amounts to a material omission that vitiates the transparency of the auction process.

iii. Active Concealment: The Respondent contended that the Bank remained

silent regarding ongoing claims and liabilities affecting the property, which effectively misled the Respondent. It was argued that the Respondent was forced to clear these dues only to secure the necessary permissions from UPSIDA, which the Bank was otherwise duty-bound to deliver free of cost.

iv. Inequity of the Transaction: Finally, it was urged that it would be highly inequitable to allow the Bank to retain the full auction price while leaving the purchaser to settle substantial pre-sale liabilities. Counsel argued that the Respondent is entitled to be made good for the expenses incurred in clearing encumbrances that the Bank represented did not exist.

ANALYSIS AND FINDINGS:

9. The central legal question before this Court is whether the explicit "as is where is" and "what is where is" read along with other terms of an auction sale under the SARFAESI Act, bind the auction purchaser, or whether the Bank's failure to settle pre-sale statutory dues (UPSIDA charges) constitutes a breach of the duty of disclosure that vitiates the contractual terms of the sale.

10. To adjudicate this controversy, it is necessary to examine the interplay between the "as is" nature of SARFAESI auctions and the statutory obligations of a secured creditor. The legal position governing auction sales of secured assets is well-settled. While such a transfer is prima facie one where the buyer takes the property in its existing condition, the protection afforded to the seller by an "as is where is" clause is not absolute.

11. Under Section 55(1)(a) of the Transfer of Property Act, 1882, a seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. Within the specific framework of the SARFAESI Rules, Rule 8(6)(a) and (f) of the Security Interest (Enforcement) Rules, 2002, mandates that the authorized officer shall serve a notice of sale to the borrower containing, inter alia, the description of the immovable property and "any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property."

12. The jurisprudence on this point, notably the decision of the Allahabad High Court in *Rekha Sahu v. UCO Bank* 2013 (101) ALR 344, clarifies that although a SARFAESI sale is on an "as is" basis, the authorized officer is not absolved of the duty to disclose known encumbrances. The Court held that the immunity provided by "as is where is" terms cannot be used to shield the non-disclosure of material facts that are within the Bank's knowledge. Similarly, the Supreme Court in *Punjab National Bank v. Mithilanchal Industries Pvt. Ltd.* 2020 SCC OnLine SC 668 and more recently in *Delhi Development Authority v. Corporation Bank & Ors* 2025 INSC 1161 has emphasized that a secured creditor must act with transparency. In the Delhi Development Authority case, the Supreme Court held that the non-disclosure of the DDA's 'unearned increase' charge - a statutory claim, violated the requirement to inform bidders of material

encumbrances, leading to the quashing of the auction.

13. However, the force of these precedents must be weighed against the specific facts and contractual stipulations of the present case. The efficacy of an "as is" clause depends on whether the seller acted bona fide or actively concealed facts. In *Kalyani (India) Pvt. Ltd. v. Punjab National Bank* 2024:DHC:451, this Court observed that while a seller cannot "shed away" responsibilities through active concealment, the purchaser is equally bound by the terms of the notice if they are clear and unambiguous.

14. In the present Appeal, the Appellant Bank has demonstrated a consistent and transparent disclosure of the sale terms. The public notice dated 28.11.2018 contained an explicit and wide-ranging indemnity clause. Specifically, Clause 12 of the said notice warned:

"...if any dues or penalty or any charges are due/levied on the property by any authority then it will also be borne by the purchaser in addition to sale price."

15. This was not a vague "as is" clause but a specific contractual allocation of risk regarding statutory dues. This condition was further reinforced in the Bank's communication dated 14.12.2018 (Letter of Acceptance), where Clause 8 explicitly advised the Respondent that any charges or taxes pending on the property were to be borne by him. The Respondent, having participated in a high-stakes auction with a bid of over ₹ 6.07 Crores is presumed to be a sophisticated commercial entity. Such a purchaser is expected to exercise due diligence commensurate with the value of the transaction.

16. Unlike the facts in *Mandava Krishna Chaitanya v. UCO Bank* 2018 (2) ALT 640, where the bank was found to have made "no exercise whatsoever to verify encumbrances," the Appellant Bank in this case acted based on its records, representing that there were no "known" encumbrances. The Respondent has failed to produce any evidence to suggest that the Bank had actual knowledge of the specific UPSIDA dues and deliberately suppressed them.

17. Furthermore, the Respondent's reliance on Rule 9(10) of the SARFAESI Rules is misplaced. Rule 9(10) requires the sale certificate to mention whether the property is sold free from encumbrances. The Sale Certificates issued on 29.12.2018 explicitly stated they were on an "as is where is" and "what is where is" basis and free from encumbrances known to the Bank. The Respondent accepted these certificates unconditionally and took physical possession on 01.01.2019 without any protest or reservation regarding the title or pending dues.

18. The principle of caveat emptor (buyer beware) finds strong application here. The dues claimed by UPSIDA (a public authority) were matters of public record and pertained to the leasehold nature of the property. A simple inquiry with UPSIDA, as the lessor, would have revealed the status of the dues. By signing the acceptance and the sale certificate, the Respondent entered a binding

contract to assume all "unknown" liabilities. As held in *Royal Star Trading Co. v. IFCI Ltd.* 2014:DHC:4559, an auction purchaser cannot renege on a confirmed bid or seek modifications to the price (by way of reimbursement of dues) simply because of a subsequent discovery of liabilities that they had already contractually agreed to bear.

19. The Commercial Court failed to appreciate that the "as is" clause in the present case was supplemented by a specific warning regarding statutory dues. The court below erroneously applied the standard of an absolute warranty of title, which does not exist in SARFAESI auctions unless specifically promised. In the absence of fraud or active misrepresentation, neither of which has been proved by the Respondent, the contractual terms must be enforced.

20. The finality of a judicial or statutory auction is a matter of public policy. To allow a purchaser to recover pre-sale dues after accepting the sale certificate unconditionally would render the "as is where is" clause otiose and create perpetual uncertainty for secured creditors.

21. In view of the above, we find that the Bank did not violate its statutory duty of disclosure under the SARFAESI Rules or the Transfer of Property Act. The Respondent, having voluntarily accepted the risk of unknown encumbrances, is estopped from seeking reimbursement for the UPSIDA dues.

CONCLUSION:

22. Considering the above, this Court finds that the Commercial Court erred in holding the Bank liable. The contractual indemnity provided in the auction notice, coupled with the Respondent's failure to prove active concealment by the Bank, necessitates the dismissal of the suit. The Respondent is bound by the "As is where is" terms and the specific clause regarding authority dues.

23. Consequently, the present Appeal is allowed. The Impugned Judgment and Decree dated 31.01.2023 is hereby set aside. The suit filed by the Respondent stands dismissed.

24. The pending application also stands closed.