(2022) 04 TEL CK 0063

In the Telangana High Court

Case No : Writ Petition No. 1291 Of 2021

H. Sanjay Kumar APPELLANT

Vs

Canara Bank And 15 Others RESPONDENT

Date of Decision : 27-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Security Interest (Enforcement) Rules, 2002 — Section 8, 8(5), 8(6), 9, 9(1)
Recovery Of Dues And Bankruptcy Act, 1993 — Section 19
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 13(8), 17, 18

Citation : (2022) 04 TEL CK 0063

Hon'ble Judges : Ujjal Bhuyan, J;P. Sree Sudha, J

Bench : Division Bench

Advocate : Vivek Jain

Final Decision : Dismissed

Judgement

1. Heard Mr.Vivek Jain, learned counsel for the petitioner; Mr. Deepak Bhattacharjee, learned senior counsel for respondent No.1; Mr. Sunil B Ganu, learned counsel for respondent Nos.13 to 15; and Mr. Y. Srinivasa Murthy, learned counsel for respondent No.16.

2 By filing this petition under Article 226 of the Constitution of India, petitioner seeks a declaration that the action of respondent No.1 in conducting the e-auction on 05.12.2020 on the basis of the e-auction sale notice dated 20.11.2017 which had fixed the auction date as 27.12.2017 as illegal and unconstitutional and consequently to set aside the same.

3 Case of the petitioner is that respondent No.2 is the partnership firm of which respondent Nos.3 to 13 are the partners except respondent No.6 who is the legal heir of late Smt. Rajubai who was one of the partners of the firm. Likewise, respondent Nos.14 and 15 are the legal heirs of late Dayakiran who was also one of the partners of the partnership firm. Respondent No.2 had availed loan of

Rs.30 lakhs from the first respondent – Canara Bank, Nizamabad branch on 13.11.1996 for business purpose. Petitioner stood as guarantor to the loan so availed of by respondent No.2 from respondent No.1. Subsequently, respondent No.2 obtained further loans from the first respondent, details of which have been furnished in paragraph No.11 of the writ affidavit.

4 According to the petitioner, respondent No.3 is the managing partner of the firm i.e. respondent No.2. He had played fraud upon the other partners of the partnership firm and had siphoned of the money of the partnership firm. As a result, there was default in the repayment of loan. Consequently, the loan account of respondent No.2 was classified as non-performing asset (NPA) on 25.07.2017; whereafter respondent No.1 issued demand notice dated 01.08.2017 calling upon respondent Nos.2 to 13 to pay back the outstanding dues amounting to Rs.7,55,46,893-24 to respondent No.1.

5 Respondent No.1 thereafter filed application under Section 19 of the Recovery of Dues and Bankruptcy Act, 1993 (briefly, 'the 1993 Act' hereinafter) before the Debts Recovery Tribunal-I, Hyderabad (Tribunal), which was registered as O.A.No.171 of 2018. In the meanwhile, respondent Nos.13 to 15 filed a suit for partition arraying the petitioner and respondent Nos.1 to 12 as defendants in O.S.No.26 of 2016 on the file of the District Judge, Nizamabad. In the said suit, an injunction petition was also filed being I.A.No.1401 of 2016. In the said petition learned Court below granted an interim injunction restraining the defendants from alienating the suit schedule property which includes the properties mentioned in O.A.No.171 of 2018.

6 Petitioner has stated that instead of auctioning all other schedule properties, only the subject property was sought to be auctioned. Details of the subject property are as under:

"Mpl.Nos. (7-10-939, 940, 941, 941/1, 942, 943, 944, 945, 946, 947 and 7-10-938/3), situated at abutting 80'-00" wide Rashtrapathi Road, Opp: District Headquarters Hospital, Nizamabad."

7 Respondent No.1 issued possession notice dated 24.10.2017 and thereafter e-auction sale notice dated 20.11.2017 fixing auction sale of the schedule property on 27.12.2017.

8 At this stage, respondent Nos.13 to 15 had filed securitization application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the 'SARFAESI Act') before the Tribunal which was registered as S.A.No.373 of 2017. Initially, Tribunal had stayed all further proceedings including the auction scheduled on 27.12.2017. However, on contest, Tribunal dismissed S.A.No.373 of 2017 vide the order dated 23.04.2019 observing that respondent Nos.14 and 15 being the legal heirs of the deceased partner did not have locus standi to question SARFAESI proceedings initiated by respondent No.1.

9 Against the above decision of the Tribunal, respondent Nos.13 to 15 approached this Court by filing W.P.No.13184 of 2019. The said writ petition was dismissed by this Court vide the order dated 09.10.2020. However, liberty was granted to the petitioners therein to approach the appropriate forum under Section 18 of the SARFAESI Act.

10 It is stated that in the meanwhile respondent Nos.13 to 15 filed an interlocutory application being I.A.No.2044 of 2019 in O.A.No.171 of 2018 for appointment of a receiver to take physical possession of the stock by enforcing the hypothecation agreement. However, the same was dismissed by the Tribunal. Against such order of dismissal, respondent Nos.13 to 15 again approached this Court by filing W.P.No.18039 of 2019. But the same was dismissed on the ground of alternative remedy.

11 After dismissal of W.P.Nos.13184 of 2019 and 18039 of 2019, first respondent continued with the e-auction notice dated 20.11.2017 on 05.12.2020 without issuing further notice of its intention to conduct auction sale on 05.12.2020. Respondent No.16 was the highest bidder whose bid amount was Rs.21,50,00,000-00. It is alleged that respondent No.16 is the wife of respondent No.3. Respondent No.16 deposited 25% of the bid amount on 05.12.2020 whereafter sale confirmation letter was issued on 05.12.2020. It appears that respondent No.16 thereafter paid the balance bid amount; whereafter respondent No.1 sold the property to respondent No.16. Thereafter respondent No.1 had filed an interim application before the Tribunal stating that amount received in the auction sale was in excess of the amount to be realized as such respondent No.1 sought direction from the Tribunal to deposit the excess amount equally in favour of all the co-owners.

12 In the writ petition, petitioner has expressed the following grievances:-

a. The reserve price set for the auction sale was below the market value of the schedule property,

b. Respondent No.1 conducted auction without obtaining fresh valuation of the property and proceeded to conduct auction sale on 05.12.2020 on the basis of property valuation of the year 2017,

c. Respondent No.1 is hand in glove with respondent No.3, which would be evident from the fact that schedule property was sold to respondent No.16 who is the wife of respondent No.3,

d. As per proviso to Rule 9 (1) of the Security Interest (Enforcement) Rules, 2002 (briefly, 'the SARFAESI Rules' hereinafter) if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and the sale is required to be conducted again, then notice of sale has to be given with 15 days time to the borrower/guarantor for the subsequent sale. However, no such notice was issued to the petitioner before the auction sale.

13 Respondent No.1 addressed letter dated 08.01.2021 to the petitioner seeking

his consent to distribute the balance sale surplus amongst the owners of the property i.e. respondent Nos.3, 7 and the petitioner herein which is Rs.9,12,00,000-00 after deducting the dues of the bank. In his reply dated 11.01.2021 petitioner stated that he is entitled to 1/3rd of the entire sale proceeds and not just 1/3rd of the balance surplus sale proceeds.

14 With the above grievance petitioner has filed the present writ petition seeking the relief as indicated above.

15 This Court, by order dated, 21.01.2021, directed that no third party interest should be created over the subject property.

16 Respondent No.1 has filed counter affidavit as well as stay vacating petition. The counter affidavit has been filed through Dr.A.S.Farida, Assistant General Manager of respondent No.1-Canara Bank. At the outset, a preliminary objection has been raised as to maintainability of the writ petition. It is contended that the petitioner did not file appeal against the order dated 23.04.2019 passed by the Tribunal in S.A.No.373 of 2017 before the Debts Recovery Appellate Tribunal at Calcutta under Section 18 of the SARFAESI Act.

17 Respondent No.1 has thereafter given the background of 2nd respondent – how it was found and composition of the partnership firm changing from time to time. Respondent No.1 thereafter has given details of loan facilities availed of by respondent No.2 and the securities offered, both primary and collatoral, for obtaining the loan facilities. Further, details of the guarantors have been provided including Sri H.Sanjay Kumar i.e. the petitioner.

18 For default in repayment of the loan amount, the loan account was classified as NPA on 25.07.2017 on the basis of the guidelines of respondent No.1 and Reserve Bank of India. Thereafter, demand notice was issued by respondent No.1 on 01.08.2017 under Section 13 (2) of the SARFAESI Act. Since there was no compliance, possession notice dated 24.10.2017 was issued under Section 13 (4) of the SARFAESI Act. The possession notice was published on 30.10.2017 in two widely circulated newspapers in Telangana, one in Telugu (M/s. Namaste Telangana) and one in English (M/s. Telangana Today). The possession notice was also affixed at a conspicuous place of the schedule property on 24.10.2017. It may be mentioned that as per the demand notice outstanding dues was quantified at Rs.7,03,46,153-24 as on 01.08.2017.

19 After taking over of symbolic possession of the schedule property on 24.10.2017, respondent No.1 was issued again a notice under Rule 8 (6) and Rule 9 (1) of the SARFAESI Rules, 2002 on 21.11.2017 which was also published in two newspapers, The Hindu (English) and Eenadu (Telugu). The said notice was also sent to the borrower and the guarantor under registered post. Auction sale was fixed on 27.12.2017.

20 Insofar the civil suit is concerned, stand taken by respondent No.1 is that the family disputes would have to be resolved by the family members amongst

themselves. Respondent No.1 has nothing to do with it. Nonetheless, since respondent No.1 was made a defendant, it has filed written statement. It is further stated that application for injunction filed by the petitioner was dismissed by the civil Court.

21 Adverting to the order dated 23.04.2019 passed by the Tribunal in S.A.No.373 of 2017, it is contended that the mortgaged properties were auctioned strictly following the procedure laid down under the SARFAESI Act and the SARFAESI Rules. All the mortgaged properties are self-acquired properties which is evident from the title deeds deposited with the first respondent. Tribunal in the order dated 23.04.2019 had confirmed that respondent No.1 had strictly followed the provisions of the SARFAESI Act and therefore the auction was in order.

22 According to respondent No.1, after the order dated 23.04.2019 was passed by the Tribunal, respondent No.1 continued with the auction which was abruptly stalled on 27.12.2017 upon receipt of letter dated 27.12.2017. In the auction proceedings respondent No.16 was declared as the successful bidder which was accepted by the system. Auction purchaser had already paid earnest money deposit on 26.12.2017. Respondent No.1 has taken fresh valuation of the property. The auction was concluded on 05.12.2020 which was a continuation of the auction sale abruptly stalled on 27.12.2017. The auction was so concluded on disposal of S.A.No.373 of 2017, W.P.No.13184 of 2019 and W.P.No.18039 of 2019 and I.A.No.37 of 2018 in I.A.No.1401 of 2016 in O.S.No.26 of 2016.

23 Denying all contentions raised by the petitioner, respondent No.1 has asserted that the property in question is a self-acquired property as per the documents submitted with respondent No.1. Insofar O.A.No.171 of 2018 is concerned, Tribunal, vide docket order dated 11.01.2021, had disposed of O.A.No.171 of 2018 as having been settled out of Court. I.A.No.1401 of 2016 in O.S.No.26 of 2016 was dismissed by the Court of Principal District Judge, Nizamabad, vide order dated 27.01.2020.

24 Respondent No.1 has obtained afresh two valuation reports of the schedule property from two independent certified valuers dated 29.09.2020 and 24.11.2020. Reserve price fixed by respondent No.1 at Rs.21.50 crores was much higher than the realizable value of the property as per the fresh valuation reports obtained by respondent No.1. It is stated that sale certificate was issued to respondent No.16 on 02.01.2021 and the same was registered n 15.01.2021 following remittance of full amount by the auction purchaser. Physical possession of the schedule property was also handed over to the auction purchaser.

25 In the auction sale, since surplus sale proceeds for amount of Rs.912 lakhs was received for distribution, I.A.No.1034 of 2020 was filed before the Tribunal by respondent No.1. However, Tribunal took the view that as the property was auctioned under the provisions of the SARFAESI Act, it would be appropriate for respondent No.1 to distribute the sale proceeds itself instead of seeking indulgence of the Tribunal. Accordingly the application was closed. It was

thereafter respondent No.1 had addressed letter dated 08.01.2021 to the mortgagers. Two of the mortgagers Sri H.Sampath Rao and Sri H. Narasaiah had accepted the same and given their consent for release of the balance sale proceeds and to their share from such sale proceeds.

26 Respondent Nos.13 to 15 have filed counter affidavit supporting the writ petition. It is stated that the schedule property was sold at a throwaway price of Rs.21.50 crores to respondent No.16 who is the wife of respondent No.3 as against the market price of Rs.31.49 crores. Details of the partnership as well as the litigative history have been narrated. It is alleged that there is gross violation of the procedure laid down in Rules 8 and 9 of the SARFAESI Rules, which has vitiated the auction sale, besides respondent No.1 has not followed the procedure laid down under the SARFAESI Act.

27 Respondent No.16 in her counter affidavit has denied all the allegations made by the petitioner and respondent Nos.13 to 15. It is stated that pursuant to the order of the Tribunal dated 23.04.2019, respondent No.1 had proceeded with the auction of the schedule property on 05.12.2020. When advertisement was issued on 20.11.2017 in the newspapers proposing auction sale of the schedule property, respondent No.16 placed her e-auction bid application online after complying with the necessary formalities. Subsequently, when a letter was received from one of the respondents, authorized officer had put the auction on hold. Respondent No.16 was informed that the auction would be proceeded further once the hurdles relating to auction were removed. Subsequently, respondent Bank continued the auction on 05.12.2020. After being declared as the highest bidder, respondent No.16 remitted Rs.5,37,75,000-00 on 05.12.2020 towards 25% of the bid amount i.e. Rs.21,50,00,000-00. Respondent No.1, vide letter dated 15.12.2020, informed respondent No.16 that the sale had been confirmed in her favour and she was also advised to remit the balance 75% i.e. Rs.16,13,25,000-00 on or before 19.12.2020. This was also paid by respondent No.16. Since respondent No.16 paid the entire sale price, respondent No.1 issued sale certificate dated 02.01.2020 to the petitioner which was also registered. It is stated that since then respondent No.16 has been in physical possession of the subject property.

28 Learned counsel for the petitioner has argued that respondent No.1 ought to have issued fresh notice after the auction was stopped on 27.12.2017. It should have been a fresh auction. It should have been preceded by following the procedure prescribed under Rules 8 and 9 of the SARFAESI Rules. Failure to do so has vitiated the auction sale which is also suspected because the auction purchaser is none other than wife of respondent No.3 who is the managing partner of respondent No.2 firm, the borrower. Learned counsel has also stressed upon the submission that when respondent No.1 proceeded with the auction sale in the year 2020 it ought to have obtained fresh valuation report of the schedule property which was sold on the basis of the valuation report obtained in the year 2017. There was substantial price escalation between 2017 and 2020.

29 Learned counsel for the petitioner has placed reliance on the following decisions:-

Mathew Varghese Vs. M. Amrith Kumar (2014) 5 SCC 610, Sri Sai Annadata Polymers Vs. Canara Bank 2018 SCC OnLine Hyd 178 and Alpine Pharmaceuticals Private Limited Vs. Andhra Bank 2020 SCC OnLine TS 81.

30 Learned counsel appearing for respondent Nos.13 to 15 has supported the stand taken by learned counsel for the petitioner.

31 Learned counsel for respondent No.1, after referring to the averments made in the counter affidavit, submits that respondent No.1 has scrupulously followed the procedure laid down in the SARFAESI Act and the SARFAESI Rules while conducting auction of the schedule property. He submits that following the sale notice dated 21.11.2017 the auction sale was conducted on 27.12.2017. While it was on the verge of completion, suddenly a letter was received from one H.Rahul on 27.12.2017 (respondent No.14) for which the auction proceedings were abruptly stalled on 27.12.2017. Finally, after the writ petitions were dismissed, after the civil Court had rejected the injunction petition and after Tribunal had passed the order dated 23.04.2019, respondent No.1 resumed the auction proceedings on 05.12.2020 and completed the same. The delay in concluding the auction was purely attributable to the petitioner and the other contesting respondents. It was not delayed on account of respondent No.1 or the auction purchaser. All throughout full opportunity was granted to the borrower as well as to the guarantors including the petitioner to pay the outstanding dues and to redeem the schedule property. But that was not done.

32 Learned counsel for the first respondent has placed reliance on the following decisions:-

Authorized Officer, State Bank of Travancore Vs. Mathew K.C. (2018) 3 SCC 85, S.Karthik Vs. N. Subhash Chand Jain 2021 SCC OnLine SC 787 and Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir 2022 SCC OnLine SC 44.

33 Learned counsel for respondent No.16 has supported the stand taken by learned counsel for respondent No.1.

34 Submissions made by learned counsel for the parties have received the due consideration of the Court. The decisions cited at the bar have also been considered.

35 Having heard learned counsel for the parties and having perused the pleadings as well as the materials on record, it may be necessary to place the relevant facts in proper perspective since those have been narrated in a very haphazard manner.

36 For default in payment of the loan amount by respondent No.2 to respondent No.1, loan account of respondent No.2 was classified as NPA on 25.07.2017. This was followed by notice dated 01.08.2017 issued under Section 13 (2) of the

SARFAESI Act in terms of which outstanding dues of respondent No.2 was quantified at Rs.7,03,46,153-24 as on 01.08.2017. Since the outstanding dues were not paid back, respondent No.1 issued possession notice dated 24.10.2017 under Section 13 (4) of the SARFAESI Act. Finally sale notice dated 21.11.2017 was issued under Rules 8 (6) and 9 (1) of the SARFAESI Rules proposing to hold auction sale of the schedule properties (subject property being the property at Sl.No.II) on 27.12.2017.

37 Assailing such sale notice, respondent Nos.13 to 15 filed Securitization Application No.373 of 2017 before the Tribunal. Said respondents also filed an interlocutory application for stay which was numbered as I.A.No.2992 of 2017. By the docket order dated 26.12.2017, Tribunal granted interim stay of all further proceedings including auction of the schedule property on 27.12.2017 pursuant to e-auction sale notice dated 20.11.2017.

38 According to respondent No.1, the auction had commenced on 27.12.2017 and was on the verge of conclusion when respondent No.14 produced a letter dated 27.12.2017 stating about stay order granted by the Tribunal. In view thereof, the ongoing auction on 27.12.2017 had to be abruptly stopped.

39 We find that respondent Nos.13 to 15 had earlier instituted a suit for partition of the suit schedule property contending the same to be joint family property which is the same subject property being the property at Sl.No.11 put to auction sale on 27.12.2017. The said suit being O.S.No.26 of 2016 was instituted in the Court of the Principal District Judge, Nizamabad, wherein petitioner and respondent Nos.1 to 12 were arrayed as defendants. Plaintiffs (respondent Nos.13 to 15) filed an injunction petition which was registered as I.A.No.1401 of 2016. By docket order dated 11.11.2016, learned Court below directed the defendants not to alienate the suit property till filing of counter in the I.A.

40 Reverting back to S.A.No.373 of 2017 filed by respondent Nos.13 to 15, the same was finally heard and dismissed by the Tribunal vide the order dated 23.04.2019. As stated above, the sale notice dealt with two schedule properties and the present petition is concerned with the property at Serial No.II. In paragraph No.7 of the order dated 23.04.2019 Tribunal recorded a finding that respondent bank had strictly complied with all the provisions of the SARFAESI Act with regard to Schedule II property; respondent bank could establish that schedule II property was individual property of respondent Nos.3, 8 and 12 and not part of HUF property. As such it was held that applicant Nos.2 and 3 i.e. respondent Nos.14 and 15 had no locus standi to question the SARFAESI measures of respondent No.1. However, Tribunal noted that because of the stay order passed by the Tribunal, the proposed auction on 27.12.2017 could not be held. Be that as it may, Tribunal held that applicants (respondent Nos.13 to 15) had failed to make out valid grounds to set aside the SARFAESI measures initiated by the respondent bank against Schedule II property. Liberty was granted to the respondent bank clarifying that "respondent bank can proceed further against Schedule II property duly following the norms". In contrast to

Schedule II property in respect of Schedule I property, the sale was set aside in view of non-issuance of necessary notices to the legal heirs of the borrower. However, respondent bank was granted liberty to initiate fresh SARFAESI measures against Schedule I property duly following the norms.

41 Against the order dated 23.04.2019 passed by the Tribunal dismissing S.A.No.373 of 2017 in respect of Schedule II property, respondent Nos.13 to 15 filed a writ petition before this Court being W.P.No.13184 of 2019. However, by order dated 09.10.2020, this Court dismissed the writ petition holding that writ petitioners (respondent Nos.13 to 15) had alternative remedy of filing appeal under Section 18 of the SARFAESI Act, which they did not avail and that no extraordinary circumstances were brought to the notice of the Court to entertain the writ petition.

42 In the year 2018, respondent No.1 had filed original application under the 1993 Act before the Tribunal under Section 19 of the 1993 Act for recovery of the outstanding dues from the borrower and guarantor (petitioner) being O.A.No.171 of 2018. Respondent Nos.13 to 15 filed an interlocutory application before the Tribunal being I.A.No.2044 of 2019 seeking a direction from the Tribunal for appointment of a receiver to take physical possession of all hypothecated movable assets lying in the premises of respondent No.2 and after selling the same to deposit the sale proceeds to the credit of O.A.No.171 of 2018. This was contested by respondent No.1. After hearing the matter, Tribunal passed docket order dated 06.08.2019. Tribunal held that to enforce any security it is the prerogative of the secured creditor as to which security may fetch maximum proceeds to satisfy the debt. Observing that filing of the I.A. was nothing but an exercise to somehow drag on the proceedings, Tribunal declined to entertain the application. Hence the I.A.No.2044 of 2019 was dismissed as being devoid of any merit.

43 This order dated 06.08.2019 was challenged by respondent Nos.13 to 15 before this Court by filing W.P.No.18039 of 2019. By order dated 09.10.2020, this Court dismissed the writ petition on merits holding that there was no infirmity or error in the order passed by the Tribunal and that there was no reason to intervene under Article 226 of the Constitution of India.

44 Reverting to the civil suit instituted by respondent Nos.13 to 15, learned Principal District Judge, Nizamabad, dismissed all interlocutory applications including injunction petitions, vide order dated 27.01.2020. It may be mentioned that respondent Nos.13 to 15 had filed I.A.No.37 of 2018 in I.A.No.1401 of 2016 in O.S.No.26 of 2016 for a direction to the defendants to deposit an amount of Rs.2,47,05,890-00 to the credit of the suit before the civil Court. Learned Court observed that I.A.No.1401 of 2016 was filed for ad-interim injunction; I.A.No.38 of 2018 was filed to punish the defendants for alleged disobedience to order dated 11.11.2016; and I.A.No.1757 of 2018 was filed by one Haridas Raviraj (respondent No.5) to restrain the defendants from alienating the suit schedule property. It was noted that an ad-interim injunction was passed on 11.11.2016

directing the defendants not to alienate the suit schedule property but the same was only till filing of counter in I.A.No.1401 of 2016. The property was sold in public auction as respondent No.1 did not receive copy of the order dated 11.11.2016 till 27.12.2017. Learned Court below recorded that the subject property was auction sold by respondent No.1 after duly complying with the provisions of the SARFAESI Act. There was no willful violation of the ad-interim injunction order dated 11.11.2016. That apart, as the plaintiffs (respondent Nos.13 to 15) had already invoked the jurisdiction of the Tribunal under the SARFAESI Act it was held that civil Court had no jurisdiction. Therefore, all the interlocutory applications were dismissed.

45 After all the decks were cleared with dismissal of the securitization application, rejection of the interlocutory application in O.A.No.171 of 2018, dismissal of injunction petition and other I.As by the civil Court, and finally after dismissal of the two writ petitions by this Court, there was no impediment to respondent No.1 to resume/continue the auction sale on 05.12.2020 which was abruptly stayed on 27.12.2017.

46 At this stage, we may briefly analyze the final conclusions of the Tribunal while dismissing S.A.No.373 of 2017, vide order dated 23.04.2019. We have already noticed that there were two properties – Schedule I and Schedule II covered by the sale notice dated 21.11.2017. For not following the procedure, the auction sale in respect of Schedule I property was set aside. But in respect of Schedule II property, the conclusion reached by the Tribunal is that respondent No.1 bank had strictly complied with all the provisions of the SARFAESI Act and that respondent No.1 could establish that Schedule II property was individual property and not joint family property. Therefore, the challenge made to auction sale of Schedule II property was rejected. While rejecting such challenge, Tribunal noted that in view of the stay order passed by the Tribunal earlier (26.12.2017) the auction on 27.12.2017 could not be held. Since challenge was rejected, liberty was granted to respondent No.1 to proceed further against Schedule II property following the norms. In respect of Schedule I property, respondent bank was given liberty to initiate fresh SARFAESI measures duly following the norms. Paragraph Nos.8 and 9 of the Tribunal’s order dated 23.04.2019 is quite instructive and those are extracted hereunder:

“8. In view of the Stay Orders issued by the Tribunal, the proposed auction on 27.12.2017 could not be held. From the above discussion, facts and circumstances of the case, I hold that the applicants failed to make valid grounds to set aside SARFAESI measures initiated by the respondent bank against Schedule (2) property. The respondent bank can proceed further against Schedule (2) property duly following the norms.

9. Further, the SARFAESI measures against the Schedule (1) property are set aside in view of non-issuance of necessary notices to the legal heirs of Late H.Daya Kiran. However, the respondent bank is at liberty to initiate fresh SARFAESI measures against Schedule (1) property duly following the norms.”

47 While in the case of Schedule II property, it was stated that respondent bank could proceed further, however, in respect of Schedule I property, respondent No.1 was given liberty to initiate fresh SARFAESI measures. The distinction is subtle but significant.

48 When the stay order was passed by the Tribunal on 26.12.2017, it meant that the auction proceedings proposed on 27.12.2017 was to be kept in abeyance. From the pleadings it transpires that auction sale had commenced on 27.12.2017 and when it was at the verge of conclusion, respondent No.14 produced a letter dated 27.12.2017 informing about the stay granted by the Tribunal; whereafter the auction was abruptly stopped on 27.12.2017. After the challenge to the auction sale was rejected and liberty was granted by the Tribunal to respondent No.1 to proceed further, it would mean that the stay having been removed, the auction which was kept in abeyance came back to life and had to be proceeded from the stage where it was stopped. When the Tribunal had used the word "further" after lifting of the stay, it can only mean that respondent No.1 should proceed with the auction sale from the stage when it was stayed by the Tribunal.

49 In view of the glaring facts which are staring at the face, taking any other view would not be justified. That apart, the order of the civil Court has not been challenged before the higher forum; on the other hand, challenge made to the orders of the Tribunal by way of writ petitions were dismissed by this Court.

50 At this stage we may also mention that petitioner did not avail the alternative remedy provided under Section 17 of the SARFAESI Act against the measures taken by respondent No.1 under the SARFAESI Act. He neither filed any securitization application on his own nor did he intervene in the securitization application filed by respondent Nos.13 to 15. Therefore, both on the point of alternative remedy as well as on merit, Court is of the view that petitioner is not entitled to any relief from the writ Court.

51 After the auction sale was concluded on 05.12.2020, respondent No.16 emerged as the successful bidder, whereafter she had paid the entire bid amount of Rs.21,50,00,000-00. Thereafter sale certificate was issued to her by respondent No.1 on 02.01.2021 which was also registered. Since then respondent No.16 is in physical possession of the subject property. That being the position and considering all aspects of the matter, any interference with the auction sale now would not only reverse the clock back but would unsettle the things which have since been settled. As was lucidly expressed by the Supreme Court, though in a somewhat different context, a scrambled egg cannot be unscrambled.

52 In view of what we have discussed above, obtaining of subsequent valuation report was not necessary though respondent No.1 has asserted that it had obtained subsequent valuation reports only to satisfy itself that the sale price was more or less commensurate with the market value of the subject property. The fact that the auction purchaser turned out to be wife of respondent No.3

would not be a ground to interfere with the auction sale unless and until the materials on record overwhelmingly points towards any foul play which we are unable to discern from the facts and circumstances of the present case.

53 Before parting with the record, we may briefly analyse the case laws cited at the bar. Mathew Varghese (1 supra) was a case where a two Judge bench of the Supreme Court had interpreted provisions of Section 13 (8) of the SARFAESI Act read with Rules 8 and 9 of the SARFAESI Rules. However, the above case does not say or lay down the proposition that for any violation of the procedure laid down under Rules 8 and 9 of the SARFAESI Rules a borrower or guarantor can directly approach the High Court under Article 226 of the Constitution of India bypassing the statutory alternative remedy available under Section 17 of the SARFAESI Act.

54 In Sri Sai Annadata Polymers (2 supra) a two Judge bench of the Supreme Court in the facts of that case held that the second sale notice was in continuation of the first sale notice since the sale scheduled pursuant to the first sale notice could not be held on account of reasons solely attributable to the guarantors. After holding that the right of redemption stands extinguished on the sale certificate getting registered, Supreme Court highlighted the purpose for which the SARFAESI Act was enacted.

55 A two Judge bench of the Supreme Court in Authorized Officer, State Bank of Travancore Vs. Mathew K.C (4 supra) referred to the statement of object and reasons of the SARFAESI Act and various decisions as to maintainability of writ petition vis a vis alternative remedy under Section 17 of the SARFAESI Act. It was held that in view of the availability of statutory alternative remedy under Section17 of the SARFAESI Act before the Tribunal and under Section 18 before the Appellate Tribunal, a writ petition ought not to be entertained. It is a matter of serious concern that despite repeated pronouncements of the Supreme Court some of the High Courts continue to ignore availability of statutory remedy under the SARFAESI Act and exercise jurisdiction under Article 226 of the Constitution of India for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. Remedy under Section 17 of the SARFAESI Act is an efficacious remedy and question of filing writ petition directly under Article 226 of the Constitution of India does not arise.

56 In Alpine Pharmaceuticals Private Limited (3 supra) though the Supreme Court was concerned with filing of writ petition against private financial institutions / banks for actions under the SARFAESI Act, nonetheless, it has been held that if proceedings are initiated under the SARFAESI Act and the borrower is aggrieved by such action he has to avail the remedy under the SARFAESI Act and no writ petition would lie or would be maintainable. In the facts of that case, Supreme Court opined that filing of writ petition by the borrower before the High Court under Article 226 of the Constitution of India is an abuse of the process of the Court.

57 Thus, taking an overall view and considering all aspects of the matter, we are of the unhesitant view that the writ petition has to fail not only on the point of alternative remedy but on merit as well in view of what we have discussed above.

58 Consequently, writ petition is dismissed with costs of Rs.10,000-00 (Rupees Ten Thousand only) to be paid by the petitioner to the Telangana State Legal Services Authority at Hyderabad within a period of 30 days from today.

