(2014) 12 KAR CK 0100

In the Karnataka High Court

Case No : Writ Petition No. 200/2008 (GM-KSFC)

Shree Anand Life Sciences Ltd. APPELLANT

Vs

Karnataka State Financial Corporation RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115
Registration Act, 1908 — Section 17
State Financial Corporations Act, 1951 — Section 29
Transfer of Property Act, 1882 — Section 54, 58, 60, 69

Citation : (2014) 12 KAR CK 0100

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : M.R. Naik, Sr. Counsel, Pratapsinh R.A. and G.K. Hiregoudar, Advocate for the Appellant; Veeresh Budihal for Rudragowda, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—Petitioner is a company engaged in the manufacturing of pharma formulations (injectables).

2. Petitioner was the highest bidder of land and building as well as plant and machinery in Plot No. 62/B, Sy. No. 536, KIADB, Honaga Industrial Area, Belgaum, (hereinafter referred to as "mortgaged property").

3. The prayer sought in the writ petition is a direction to first and second respondents - Karnataka State Financial Corporation (hereinafter, referred to as "KSFC"), to hand over possession of the mortgaged property, sold pursuant to its tender acceptance dated 17/10/2007 (Annexure "B") by complying with the conditions of tender proceeding at Annexure "A" dated 29/07/2007 by considering its representations at Annexures "C" to "G". A declaration is sought to the effect that communication dated 12/12/2007 at Annexure "H" is illegal and impermissible in law. A further prayer to pay interest has been sought by the petitioner on account of there being delay in handing over possession of the

mortgaged property. Other incidental prayers have also been sought by the petitioner.

4. It is the case of the petitioner that first respondent - KSFC had invited offers through a public advertisement for the sale of certain properties of its defaulters, so as to recover outstanding dues to KSFC. One of the said properties is the mortgaged property belonging to the third respondent - industry. The third respondent is a unit financed by KSFC, Belgaum. The unit had a term loan from KSFC but on account of the non-repayment of the loan amount with interest, KSFC initiated action under Section 29 of the State Financial Corporation Act, 1951 (hereinafter, referred to as "the SFC Act"), to take over the assets of the industry. It appears that KSFC, Belgaum had called for tenders from persons for the sale of the mortgaged property on four occasions. It had also provided opportunity to the third respondent to repay the outstanding dues. It is also stated that the third respondent failed to comply with the terms and conditions of the One Time Settlement Scheme (hereinafter, referred to as the "OTS Scheme") applicable to it. Ultimately, the mortgaged property was again brought to sale through a notification published in "Vijaya Karnataka, Kannada Daily News Paper" on 29/07/2007 (Annexure "A").

5. According to the petitioner, it made an offer under the tender-cum-negotiation proceedings and its offer was the best in respect of the mortgaged property. This offer was accepted by communication dated 17/10/2007 (Annexure "B"). Petitioner submitted Pay Order dated 17/10/2007 drawn on Corporation Bank, Belgaum, paying the balance sale consideration of Rs. 18,35,000/- after adjusting E.M.D. of Rs. 10,000/- vide Annexure "C". According to petitioner, it waited for a reasonable period of time for first and second respondents to hand over possession of the mortgaged property and then, made representations for the actual handing over of possession as it had borrowed funds for the purpose of purchasing the mortgaged property. A representation dated 04/12/2007 in that regard is produced as Annexure "E" to the writ petition. Subsequent correspondence were made on 10/12/2007 and 18/12/2007. In the interregnum on 12/12/2007, second respondent sent a communication to the petitioner informing that the competent authority had extended time to third respondent herein, to avail the OTS facility, so as to close the account. Annexure "H" is a copy of that communication, which is assailed in this writ petition. According to petitioner, KSFC was to give possession of the mortgaged property in terms of Condition No. 4 of communication dated 17/10/2007 ''(Annexure "B"), the same not having been done, petitioner has sought a direction to KSFC in that regard.

6. In response to the petition averments, KSFC in its statement of objections has stated that third respondent was sanctioned a loan of Rs. 16,35,000/- on 17/05/1997 and a bridge loan of Rs. 5,50,000/- on 17/03/2000 for establishing an industrial unit and the entire amount was disbursed to it. Mortgaged property was a security given by the third respondent in respect of the aforesaid loan. The third respondent repaid only Rs. 22,06,000/-, including payment of interest of

Rs. 14,87,000/-. However, there was default in the repayment and a show cause notice was issued to the third respondent on 07/10/2005 and as there was no positive response to that, action was initiated under Section 29 of the SFC Act, 1951. Although, third respondent was permitted to be in possession of the mortgaged property, since there was default in the repayment of the dues, the mortgaged property was notified for sale on four occasions between the years 2005 to 2007. That the third respondent sought for relief under OTS Scheme and it made a payment of Rs. 4,00,000/-. It was directed to pay Rs. 18,05,000/- within 90 days as per the OTS Scheme by letter dated 14/03/2007 (Annexure "R-2"). As the outstanding dues were not repaid by third respondent the mortgaged property was once again notified for sale on 29/07/2007. The sale negotiation was conducted on 18/08/2007. Petitioner offered to purchase the mortgaged property of Rs. 18,45,000/-, which fact was also informed to the third respondent by letter dated 31/08/2007 (Annexure "R-3"), which also intimated that it could bring a better offer. Instead, third respondent sought extension of time to pay the amount under the OTS Scheme. KSFC issued a communication dated 17/10/2007 to the petitioner about the representation made by third respondent for extension of time to repay the dues under the OTS Scheme. It has been admitted that the petitioner had paid the amount of Rs. 18,45,000/- on 17/10/2007 itself pursuant to the acceptance of the sale made to it.

7. According to KSFC, taking into consideration the genuine problems of the third respondent, time for repayment under the OTS Scheme was extended by 30 days vide communication dated 05/11/2007. Third respondent made one more representation on 05/11/2007 to the KSFC and paid a sum of Rs. 8,00,000/- on 16/11/2007 and agreed to pay the balance amount along with interest for the delayed period. KSFC extended 15 days time to third respondent to avail the benefit under OTS Scheme by its letter dated 04/12/2007. Accordingly, communication was issued by the second respondent on 07/12/2007, informing the third respondent to pay the balance amount within the stipulated time (Annexure "R-5"). But in the interregnum, petitioner had requested for handing over possession of the unit in response to which, letter dated 12/12/2007 was issued to the petitioner, which is assailed in this petition. According to KSFC, third respondent paid a sum of Rs. 21,15,558/- on various dates between 16/11/2007 to 17/03/2008 and that the entire dues have been paid. Under these circumstances, KSFC cancelled the sale made to the petitioner by its letter dated 08/04/2008 (Annexure "R-7") and a cheque for Rs. 19,09,753/-, which was inclusive of the interest was sent to the petitioner.

8. At this stage itself, it may be noted that the writ petition was filed on 03/01/2008 and payments were made by the third respondent during the pendency of the writ petition. According to KSFC, a mortgager can retain his property even after the receipt of sale consideration from the auction purchaser if the entire dues are paid by the mortgager in which event, the auction purchaser would be entitled to refund the sale consideration with reasonable interest. After having received the aforesaid amounts from the third respondent,

KSFC issued letter dated 12/04/2008 for closure of the account of the third respondent vide Annexure "R-8". Subsequently, third respondent sought return of the documents of the mortgaged property from the KSFC by its letter dated 24/04/2008 (Annexure "R-9").

9. Third respondent has also filed statement of objections. According to it, KSFC was pleased to approve OTS of the loan amount which was offered by the third respondent during the extended period of time for making payment under OTS and to close the loan account. That it had paid the entire outstanding dues including interest on the delayed payment and also the interest on the amount deposited by the petitioner. According to third respondent, a sum of Rs. 25,15,558/- was paid by it and that KSFC has closed the loan account of third respondent. On the basis of the aforesaid pleadings, third respondent sought for dismissal of the writ petition.

10. I have heard the learned senior counsel, Sri M.R. Naik, for the petitioner and Sri Veeresh Budihal, learned counsel for respondent Nos. 1 and 2 and Sri B.S. Kamate, learned counsel for Respondent No. 3 and perused the material on record as well as the original record.

11. It was contended on behalf of the petitioner that KSFC could not have rescinded from the concluded tender negotiations it had with the petitioner for the sale of the mortgaged property particularly, after the confirmation of sale on 17/10/2007 and receipt of the sale consideration by pay order of the same date, for an amount of Rs. 18,35,000/-. It was contended that once the auction of the mortgaged property took place and the sale was confirmed by KSFC, it could not extend the time for payment under the OTS Scheme to the defaulter or the debtor, as third party rights would have been created in respect of the mortgaged assets. In the instant case, the third respondent borrower was given an opportunity even after the sale negotiations were concluded with the petitioner but prior to confirmation, so that the latter could bring a better offer than the offer made by the petitioner. But the third respondent did not make use of that opportunity and hence, KSFC confirmed the sale in favour of the petitioner vide Annexure "C" letter dated 17/10/2007 and it also accepted the payment made by the petitioner. Thereafter, KSFC could not have extended time to the third respondent to make payment under the OTS Scheme and closed the loan account. It was contended that the borrower could not have been permitted to avail benefit of the OTS Scheme once the mortgaged asset was put to sale by the mortgagee and third party rights were created. It was also brought to my notice that the balance dues under the OTS Scheme was received by KSFC from the third respondent after the filing of the writ petition and during its pendency. It was contended that during the pendency of the writ petition particularly when KSFC and third respondent had been notified about it, they could not have entered into negotiations for the closure of the loan account without permission from this Court.

12. It was also contended that if the third respondent had acted as a true

mortgagor, then the entire dues would have been paid by it to KSFC under Section 60 of the Transfer of Property Act, 1882 (hereinafter, referred to as "the T.P. Act"). But in the instant case, the amount received by KSFC was not the entire mortgage dues but it was under the OTS Scheme. If the OTS Scheme was made applicable to the third respondent and if there was an extension of time granted to make the repayments under that Scheme, then it had to be in terms of the OTS Scheme which was applicable at the relevant point of time. It was contended that there was no scope for extension of time to pay dues under the prevalent OTS Scheme and that the payment made in the instant case was neither in terms of Section 60 of the T.P. Act nor under the provisions of the OTS Scheme. That KSFC had no authority to receive the balance dues from the third respondent under the OTS Scheme which did not provide for any extension of time, was the submission. It was contended that the relevant OTS Scheme applicable to the third respondent was not of the year 2004 but of the year 2006.

13. Relying on certain decisions of the Hon''ble Supreme Court as well as this Court it was contended that the action of KSFC in receiving the dues under the OTS Scheme was illegal, arbitrary and not in accordance with law and therefore, KSFC must be directed to hand over possession of the mortgaged property sold to the petitioner pursuant to sale negotiations and letters dated 17/10/2007.

14. Per contra, learned counsel for respondent No. 2 - KSFC stated that in terms of Section 29 of the SFC Act, action was initiated against respondent No. 3 as there were outstanding dues. That Section 60 of the T.P. Act gives ample right to a mortgager to redeem the mortgage. The right of redemption is not extinguished merely because the mortgaged property is brought to sale by the mortgagee. That in the instant case, KSFC exercised its discretion to extend the time to respondent No. 3 to pay the outstanding dues under the OTS Scheme and in the extended period, respondent No. 3 paid up the dues and also the interest and thereby the mortgage was redeemed. Accepting the dues from the respondent No. 3, KSFC closed the latter''s loan account and therefore, petitioner cannot have any grievance on the closure of the loan account of respondent No. 3, as KSFC was able to recover the outstanding dues from respondent No. 3. It was contended that under Section 60 of the T.P. Act, the conditions for redemption of mortgage deed are mentioned and when once those conditions have been fulfilled, KSFC is under a duty to accept redemption of mortgage and close the loan account of respondent No. 3.

15. Placing reliance on certain decisions of the Hon''ble Supreme Court, it was contended that so long as the conditions of Section 60 are applicable, a mortgager has every right to redeem the mortgage in which event, right of forfeiture of a mortgage would not apply.

16. Learned counsel for KSFC during the course of his submission filed certain documents and also produced original records and contended that the benefit of OTS Scheme was given to respondent No. 3 under the OTS Scheme dated 10/07/2004 issued by Circular No. 44. Referring to the mortgage deed executed

by respondent No. 3, it was contended that KSFC had a right to refix the repayment of the dues and/or the interest or the balance outstanding and that in the instant case, it was done under the OTS Scheme. Lastly, it was contended that the petitioner is only an auction purchaser and cannot object about closure of the loan account of the respondent No. 3 by KSFC that no relief could be granted to the petitioner and that the petition has to be dismissed. Certain decisions were relied upon by learned counsel for KSFC, which would be referred to during the course of this order.

17. Learned counsel for respondent No. 3 while adopting the submissions made by the KSFC submitted that under the extended OTS Scheme, respondent No. 3 repaid the outstanding dues which were accepted by KSFC. Consequently, the loan account of the respondent No. 3 was closed. No fault can be found in the action of the KSFC and that there is no merit in this writ petition.

18. In reply to these arguments, learned senior counsel Sri Naik, appearing for the petitioner, contended that the OTS Scheme prevailing under Circular No. 44 dated 10/07/2004 was withdrawn and a new OTS Scheme was substituted, which had to be made applicable to respondent No. 3. Under that scheme, there is no provision for extension of time for payment of dues under the OTS Scheme. There is no discretion vested with KSFC to accept the outstanding dues once the OTS facility was cancelled, which had been done in the case of respondent No. 3, by letter dated 12/12/2007. That KSFC is not fair in not producing the relevant OTS Scheme before this Court but is relying on an earlier scheme which has been withdrawn. That KSFC is unable to state as to whether it has acted under Section 60 of the T.P. Act or under the provisions of the OTS Scheme. If Section 60 of the T.P. Act is applied, then the entire mortgage money had to be paid by the respondent No. 3, which has not been done so in the instant case. If the acceptance of the dues is under the OTS Scheme, then it had to be in accordance with the extant OTS Scheme and not under Circular No. 44. Therefore, action of KSFC in accepting the outstanding dues of respondent No. 3 and closing the loan account is arbitrary and illegal and it is not in accordance with law. Learned senior counsel therefore contended that the prayers made in the writ petition be granted by allowing the writ petition.

19. Having heard learned counsel for the parties, the following points would arise for my consideration:--

"1) Whether the repayment of dues by respondent No. 3 to KSFC was under the provisions of the relevant OTS Scheme?

2) If not, whether the repayment of dues by the respondent No. 3 to KSFC was in terms of Section 60 of the T.P. Act?

3) Whether the KSFC was justified in accepting the dues paid by the respondent No. 3 and closing the loan account?

4) Whether the petitioner is entitled to any relief?

5) What order?"

20. From the material on record, it is noted that respondent No. 3 was sanctioned a term loan of Rs. 16,35,000/- on 17/09/1997 and a bridge loan of Rs. 5,50,000/- on 07/03/2000 by KSFC, for the purpose of its industry. That respondent No. 3 defaulted in repayment of the aforesaid dues. As a result, a show cause notice was issued on 17/10/2005 calling upon it to show cause as to why action should not be initiated for recovery of the dues in accordance with Section 29 of the SFC Act. As the dues were not paid by respondent No. 3, action was initiated under Section 29 by the KSFC and the mortgaged property was brought to sale several times. On 29/07/2007, pursuant to Notification dated 29/07/2007, inviting offers for the sale of the mortgaged property, petitioner offered the highest bid of Rs. 18,45,000/- and thereafter, respondent No. 3 was in fact, informed about this offer and as to whether it could get a better offer from other persons. Since there was no positive response to the letter of KSFC dated 31/08/2007, ultimately, the offer of the petitioner was accepted by communication dated 17/10/2007, subject to certain terms and conditions. In response to which, on the very same day, petitioner made deposit of a sum of Rs. 18,35,000/-, which was accepted by KSFC and the sale was confirmed in favour of the petitioner. But possession of the mortgaged property was not handed over to the petitioner, which has constrained the petitioner to approach this Court, seeking inter alia, the aforesaid relief. During the pendency of the writ petition, KSFC accepted a sum of Rs. 21,15,558/- from respondent No. 3 and closed the loan account. It also wrote to the petitioner stating that possession of the mortgaged property could not be handed over to it and that the amount deposited by the petitioner was being repaid along with interest at 8% p.a. by communication dated 08/04/2008, Annexure "A1", which is also assailed in this writ petition.

Re. Point No. 1:

21. As noted above, it was contended on behalf of KSFC that the acceptance of the outstanding dues from respondent No. 3 was under Section 60 of the T.P. Act whereas, petitioner''s contention is that Section 60 was not applied in the instant case and therefore, the so called redemption of mortgage in the instant case was not under Section 60 of the Act. In response, KSFC''s counsel contended that the acceptance of the dues was in accordance with the prevalent OTS scheme, which was also rebutted by petitioner''s counsel by contending that acceptance of the dues was also not in accordance with the OTS scheme.

22. In order to appreciate this aspect, the original record was perused. On perusal of the original records, it is noted that as on 10/3/2006, third respondent had to repay Rs. 32,44,683/- and in the sale negotiation meeting held on 12/06/2006 that amount had gone up to Rs. 33,78,000/- and subsequently, on 10/09/2006 outstanding dues was calculated as Rs. 35,19,000/-. On that day, promoter of the third respondent stated that he intended to submit OTS proposal within one week for closure of the loan account and therefore, decision of the

sale negotiation was deferred to 12/09/2006. On 12/09/2006, KSFC considered two offers, one from Sri Satish N. and the other from the petitioner, who had offered Rs. 7,20,000/- as the final offer for land and building only [excluding statutory liabilities i.e., difference in land cost, transfer charges, registration charges and other liabilities]. On that day, Sri M.D. Patil of respondent No. 3, again requested the Committee for examining his OTS proposal. Infact, by then, a decision was taken for closure of the account as per the prevailing online OTS Policy or value of the assets. The OTS was approved in the meeting held on 01/03/2007. Approval of the OTS amount was Rs. 18,05,000/-, being the value of the scheduled assets and the waiver of the interest dues was Rs. 20,62,499/- as on 20/12/2006. Despite communication of this decision to the third respondent and also several reminders, OTS dues were not paid. Infact, a note was also written regarding cancellation of the OTS facility as the promoter had not complied with the terms and conditions of the OTS communication. The sale of the mortgaged assets was notified on 29/07/2007 and petitioner being the highest bidder also deposited the bid amount on 17/10/2007. However, on 07/12/2007, 15 days extension of time was given to respondent No. 3 for availing OTS facility. It appears by then, Rs. 8,00,000/-has been paid towards OTS amount on 16/11/2007 and the balance of Rs. 10,45,000/- had to be paid along with interest on the payment made by the purchaser i.e., the petitioner, on or before 23/11/2007.

23. As the third respondent had failed to pay amount as per the norms, a decision was taken to hand over possession of the primary assets to the petitioner herein. When the matter stood thus, petitioner represented by letter dated 01/03/2008, requesting for handing over of possession of the unit, as the third respondent had not yet settled the OTS dues. Inasmuch as the OTS amount along with delayed period interest and interest to be paid to the purchaser i.e., the petitioner herein, on the amount deposited by the purchaser is concerned, had not been paid. Therefore, it was reiterated that possession of the assets must be given to the buyer by cancelling the OTS proposal, which Note is dated 07/03/2008, in the original records. But on 11/03/2008, decision in the matter was deferred as time was given to the third respondent to settle the account under OTS Scheme. By then, the writ petition had already been filed on 03/01/2008. On 26/02/2008, learned counsel for the KSFC stated that no decision had been taken in the matter even though the sale has been confirmed in favour of the petitioner and that a final decision would be taken soon. Therefore, the matter was adjourned from time-to-time and on 01/04/2008 loan account of Respondent No. 3 was closed and closure letter was issued on 12/04/2008.

24. On the basis of the aforesaid proceeding, contention of the learned senior counsel for the petitioner was that the closure of the loan account was illegal inasmuch as it did not comply with the terms of the OTS Scheme applicable at the relevant point of time and that the extension of time under the OTS Scheme could not have been given by KSFC to the third respondent.

25. In this regard, learned counsel appearing for KSFC relied upon clause (6) of the OTS Policy dated 10/07/2004, issued vide Circular No. 44 under which, power was vested with various officers of KSFC to condone the delay in accepting the OTS amounts. Clauses (4) and (6) of that policy deal with the mode of payments which reads as under:--

"Clause 4 : Mode of Payments

a) 20% of loan outstanding (i.e., principal default + loan balance) and OD as on date shall be paid as initial payment in one lump sum along with OTS requests and this amount shall be kept in ARPA till OTS decision is taken. The processing of OTS will be taken up only after receiving 20% down payment as above;

b) The unit shall send its acceptance for OTS communication within 10 days from the date of receipt of the communication. Further, 25% of the OTS amount shall be paid within 30 days from the date of communication of OTS approval and the balance in 3 months thereafter without any interest. The payments made beyond 3 months but within 6 months shall be charged interest at 13% p. a. on SI basis for the delayed period, on the balance amount.

c) Appeal: Any appeal against the one time settlement amount by the borrowers may be made along with 25% payment within 30 days from the date of OTS communication.

Clause 6: Delegation in respect of condonation of delay

The OTS amount shall be collected with in maximum period of 6 months as stated in para 4. The delay may be condoned in respect of cases where:

i. The reasons for the delay are genuine and convincing;

ii. The borrowers/collateral security owners/guarantors pay the interest at 13% p.a. on SI basis for the delayed period upto 6 months and thereafter on CI basis for further delayed period;

iii. The party should pay the other debits, if any, subsequent to OTS approval;

iv. The delay period commences after the expiry of the period as mentioned in para No. 4(b);

The following powers may be delegated to condonation the delay-

(a) MD may accept the delayed OTS amount upto six months without interest in respect of loans, where loan amount sanctioned is less that Rs. 5.00 lakhs.

(b) DGMs of Zonal Office/Super ''A'' branches are authorized to condone delay upto 6 months subject to collecting interest for the delayed period:

(c) GM(Zones) is authorized to condone the delay upto 12 months in respect of all the cases maintained in the BOs subject to collecting interest for the delayed period;

(d) GM(R)/GM(AR) is authorized to condone the delay upto 12 months in respect of cases maintained at NO subject to collecting interest for the delayed period;

(e) MD is authorized to take decision to condone the delay in the case of more than 1 year upto 2 years subject to collecting interest for the delayed period;"

26. Learned counsel for the KSFC contended that relying on clause (6), delay in payments made by respondent No. 3 under the OTS Scheme was condoned.

27. However, learned senior counsel appearing for the petitioner contended that the OTS Scheme relied upon by the KSFC was not the one which was applicable at the relevant point of time and that a new OTS Scheme was enforced w.e.f. 24/04/2006, which was applicable to respondent No. 3. While submitting a copy of the Circular dated 24/04/2006, learned senior counsel stated that online OTS Scheme called "On-line OTS" which was introduced w.e.f. 01/08/2005 had been modified and the revised OTS policy had been updated and issued by Circular Nos. 291 and 292 dated 15/03/2006. Those Circulars had been withdrawn and the old OTS Scheme that was brought into effect on 10/07/2004 referred to above, had been withdrawn and revised OTS Policy had been made applicable to the units in all the centers, subject to liability criteria. Where the approval of OTS amount was under Circular dated 10/07/2004 and the amount was not fully paid up within the prescribed time, in such cases, OTS Policy was to stand cancelled and such units eligible for OTS under the revised policy was to be considered for OTS Policy afresh.

28. While highlighting on revised OTS Policy, it was pointed that under clause (4.2) thereof, there was no provision for condonation of delay. Clause (4.2) of the revised OTS Policy reads as under:--

"4.2 Mode of payment for non-on-line OTS cases:

The borrower should pay the entire OTS amount within 7 days from the date of receipt of communication, failing which the OTS package shall stand cancelled automatically."

Under clause (6) pertaining to general guidelines, in sub-clause (c), it has been stated that when the OTS proposal is confirmed, the party has to pay the amount within seven days from the date of receipt of the OTS communication policy failing which, the OTS package shall stand withdrawn or cancelled automatically.

29. Contention of the learned senior counsel for the petitioner in the instant case is that, the relevant OTS was not applied and the delay in making payment under the OTS Policy was condoned even in the absence of there being any provision, on the basis of an OTS scheme which had been withdrawn by then and after receipt of notice of this writ petition, in total disregard of what has been stated by the counsel for the KSFC before this Court. It was contended that acceptance of the outstanding dues under the OTS Policy was illegal and therefore, closure of the account was not in accordance with law.

30. In the above context, learned counsel for the petitioner submitted a chronology of dates vis-?-vis loan availed by the third respondent herein from KSFC. The initial amount was Rs. 16,35,000/- and thereafter, a bridge loan of Rs. 5,50,000/- was disbursed, Thus, the total principal amount was Rs. 21,85,000/-. There was an outstanding due of Rs. 32,00,000/- approximately inclusive of the interest, the first OTS was proposed in January 2005 for Rs. 20,00,000/-and the initial amount of Rs. 4,00,000/- i.e., 20% was paid by the third respondent. But there were no further payment made and there was default after issuing show-cause notice on 17/10/2005. Possession of the assets of third respondent was taken on 09/11/2005 under Section 29 of the Act. Four sale notifications were issued for the sale of assets on 25/12/2005, 01/03/2006, 21/05/2006, 03/07/2006 and 29/07/2007. On 03/12/2006, third respondent once again sought for OTS facility which was approved on 14/03/2007, asking it to pay a sum of Rs. 18,05,000/-. As the amount was not, once again, the assets were notified for sale on 29/07/2007 and negotiations were held with the highest bidder i.e., the petitioner herein on 18/08/2007 for Rs. 18,45,000/-. Thereafter, on 31/08/2007, third respondent was requested to bring a better offer within ten days but as there was no response to that. Petitioner''s offer was accepted by KSFC on 17/10/2007 and the amount of Rs. 18,45,000/- was also paid to KSFC by the petitioner. Thereafter, petitioner issued four communications at Annexures "D", "E", "F" and "G", seeking possession of the assets. The last date of communication made by the petitioner was 18/12/2007. By then, third respondent had sought extension of time to pay the outstanding dues under the OTS Scheme. On 05/11/2007, time was extended by 15 days and on 16/11/2007, Rs. 8,00,000/- was deposited by third respondent. Significantly, this amount was paid after 17/10/2007 on which date, petitioner had deposited the sale price.

31. On the lapse of 15 days, KSFC granted another extension of time on 07/12/2007, but no amount was paid on or before 22/12/2007. The writ petition was filed on 02/01/2008 and during the pendency of the writ petition, third respondent made the following payments:--

32. According to learned senior counsel appearing for the petitioner, acceptance of Rs. 13,15,558/- during the pendency of this writ petition was in total violation of the terms and conditions of the OTS Policy and illegal as it ignored the pendency of the writ petition and also the fact that third respondent was not entitled to any extension of time under prevalent OTS Scheme. It was therefore contended that acceptance of the amount from third respondent under OTS Scheme by KSFC was not in accordance with law and that the closure of the account was illegal.

33. On consideration of the aforesaid facts as well as the relevant clauses of the OTS Scheme, what emerges is the fact that on 31/07/2006, the dues of the third respondent was 33,80,650/-. On the request made on behalf of respondent No. 3, decision taken for closure of the account as per the prevailing online OTS

policy or value of the assets, was approved by giving waiver of interest dues to an extent of Rs. 20,62,499/- as on 20/12/2006 and the assets were valued at Rs. 18,05,000/-. Despite several reminders, the OTS dues were not paid by respondent No. 3 and it was noted that OTS facility must be cancelled and the mortgaged asset was notified for sale and the petitioner being the highest bidder, deposited the amount on 17/10/2007. However, on 07/12/2007, 15 days extension of time was given to respondent No. 3 for availing OTS facility and to pay the same on or before 23/11/2007. As the third respondent failed to pay the amount it was decided that possession of the assets must be handed over to the petitioner. This was reiterated on 07/03/2008 also as per the original record. When the matter stood thus, on 11/03/2008 a decision was taken to defer the time given to the third respondent to settle the matter under OTS Scheme which was subsequent to the filing of this writ petition.

34. Learned counsel for KSFC stated that the delay in paying the dues under the OTS Scheme was condoned but as seen from the aforesaid clauses under the extant OTS Scheme vide clause 4.2, there was no provision for condonation of delay. Therefore, the acceptance of the outstanding dues under the extant OTS policy enforced from 04/04/2006 was illegal, impermissible and arbitrary as there was no scope for condonation of delay under that policy. Under clause 4.2 of the revised OTS policy with effect from 21/04/2006, the OTS amount had to be paid within seven days from the date of receipt of communication failing which the OTS package was to stand cancelled automatically. Therefore, Annexure - H, letter dated 12/12/2007, extending time to pay the dues under the OTS Scheme is quashed. Thus, in the instant case, the receipt of the outstanding dues is not in accordance with the extant OTS scheme and the successive extension of time granted to Respondent No. 3 under the scheme was illegal. The acceptance of the dues subsequent to the filing of the present writ petition was arbitrary and an instance of favouritism shown to respondent No. 3. The acceptance of the outstanding dues from respondent No. 3 and closure of the loan account was also contrary to the decision taken to hand over possession of the assets to the petitioner. Further, no permission was taken from this Court to accept the dues from respondent No. 3 and close the account, as the writ petition filed by the petitioner seeking possession of the mortgaged property was pending consideration. Hence, Point No. 1 is answered in the negative by holding that the repayment of dues by respondent No. 3 to KSFC was not under the provisions of the relevant OTS scheme of 2006.

Re. Point No. 2:

35. Learned counsel for KSFC submitted that acceptance of the dues could be construed in terms of Section 60 of the T.P. Act, if not under the relevant OTS scheme. He contended that a mortgager had a right of redemption and that right under the general law was always available to the mortgager respondent No. 3 herein. In order to consider this submission, and also the submission of learned senior counsel for the petitioner that the acceptance of the dues was not in

accordance with the provisions relating to redemption of mortgage, it is necessary to advert to the relevant provisions of the T.P. Act.

36. Section 58 of the Transfer of Property Act defines a mortgage, mortgagor, mortgagee, mortgage-money and mortgage-deed. Mortgage money includes interest awarded by way of damages.

37. Section 60 of the T.P. Act deals with the right of mortgagor to redeem the mortgage. It reads as under:

"60. Right of mortgage to redeem. At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver the possession there of to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished.

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property. Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

38. The right of redemption is a statutory right and cannot be contracted out. The right to redeem is so inseparable an incident of a mortgage that it cannot be taken away by an express agreement between the parties to the effect that the mortgage would be irredeemable or that the right is to be confined to a particular time or a description of persons. Such a description is termed a clog or fetter on the equity of redemption and is void. A covenant amounting to a clog on redemption cannot be enforced as it has no binding force either on the mortgagor or his assignees. It is often held that a redemption is the heart of mortgage and it is inherent therein and equity would not permit any device or

contrivance to prevent or impede the right of redemption. The right of redemption succeeds only when it is effectively extinguished either by act of parties concerned or by a proper decree of the competent court. Even where a mortgagee has entered into a contract of sale with a third party, the mortgagor has a right to redeem the sale successively.

39. In Abraham Ezra Issac Mansoor Vs. Abdul Latif Usman, , it has been held that where a mortgagee takes possession of the mortgaged property in exercise of the power of sale of the property with a third party, the right of redemption is not extinguished and it is open to the mortgagor to redeem the mortgage at any time before the sale is complete. Under Section 54 of the T.P. Act, a sale is complete only when it is registered under the provisions of the Indian Registration Act, 1908. Section 17 of the Act provides for registration of sale where the value of the immovable property is above Rs. 100/-. Therefore, in that decision, it was held that without a transfer of a mortgagor''s interest by a written registered instrument or by operation of law or by adverse possession, the right could be extinguished.

40. Thus the limited right given to the SFC under Section 29 of the Act as an owner to bring the properties of the defaulter to sale is not in derogation of the right under Section 60 of the T.P. Act. The fiction of law under Section 29 of the Act does not have the effect of wiping out the statutory right of redemption under Section 60 of the T.P. Act. Therefore, the right of the mortgagor still subsists and the mortgagor is entitled to exercise the right under Section 60 of the T.P. Act and the remedy under this section depends upon the existence of the relationship of mortgagor and mortgagee.

41. The expression "mortgage money" in section 60 includes all money which on taking an account between the parties may be properly allowed to the mortgagee. Mortgage money is defined in Section 58 as principal and interest. The mortgagee is entitled to treat interest due under a mortgage as a charge on the mortgaged property in the absence of any contract to the contrary and the mortgagor is bound to pay upon redemption not only the principal amount but also the interest. In Ganga Ram v. Nathu Ram AIR 1924 PC 183, it is stated that it also includes costs of litigation properly undertaken by the mortgagee for the protection of the mortgaged property.

42. Once the payment of full amount has been established, the extinguishment of the mortgage is as an inference of law. It will be extinguished by operation of law after satisfaction of the mortgage debt for which no registered document is required.

43. Section 69 deals with the power of the mortgagee to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage money without the intervention of the Court, subject to certain conditions. However, a contract for the sale of immovable property cannot extinguish the equity of redemption; it is only on the execution of the

conveyance and registration of transfer of the mortgagor''s interest by a registered instrument that the mortgagor''s right of redemption would be extinguished vide Narandas Karsondas Vs. S.A. Kamtam and Another, . It has, however, been held in K. Narayana Rao Vs. Meenakshi Velu and Others, that where the mortgagee exercised his power of sale under Section 69, the right of redemption is extinguished as soon as the entire purchase money is paid and distributed as it would have the effect of discharging the mortgage and not on the registration of the sale deed.

44. In L.K. Trust Vs. EDC Ltd. and Others, , the Hon''ble Supreme Court held with reference to the aforesaid decision that in India, there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser and in view of the fact that only on execution of conveyance, ownership passes from one party to another, it cannot be held that the mortgager would lose the right of redemption just because the property was put to auction. The Hon''ble Court emphasized that the equity of redemption is not extinguished by mere contract for sale.

45. In fact, the power given to the State Financial Corporations ["SFCs"] under Section 29 of the Act, is substantially, the same as the power created under Section 69 of the T.P. Act vide Gajraj Jain Vs. State of Bihar and Others, , wherein it was held that despite the State Financial Corporation handing over the estate to respondent No. 4 therein under a down payment of 28.85 lakhs, did not prevent the appellant therein from exercising the right of redemption. It was reiterated that a mere agreement of sale of assets cannot extinguish the equity of redemption; it was only on execution of conveyance that the mortgagor''s right of redemption will be extinguished.

46. In Mrs. Achamma Cyriac Vs. The Kerala Financial Corporation and Others, , when, for recovery of mortgaged debt, the State Financial Corporation put the property for auction sale but the auction sale was void, it was held that there was no foreclosure of mortgage. The mortgagor had the right of redemption of the mortgage on depositing all the mortgage dues up to date to which the State Financial Corporation is entitled.

47. The relevant decisions under Section 29 of the SFC Act, 1951 could be adverted to at this stage:

"(a) In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the facts were that respondent-company therein had taken a loan from the appellant - Financial Corporation therein, but had not made any installment payment, even after the repayment schedule was changed twice at its own request. After the third default the appellant-Corporation acting under Section 29 of the Act took possession of the respondent''s unit, which filed a suit for permanent injunction seeking to restrain the appellant from auctioning the unit. On facts, the Hon''ble Supreme Court held that the High Court had erred in dismissing the appellant-Corporation''s second appeal and in confirming the decree in favour of the respondent therein. In that case, the doctrine of fairness was discussed. The Hon''ble Supreme Court observed that the State Financial Corporation is an instrumentality of the State dealing with public money. It was expected to act fairly in the matter of disbursement of loans and a corresponding duty was cast upon the borrowers to repay the installments in time. Regular payment is the rule and non-payment due to extenuating circumstances is an exception. Non-payment of the installment by a defaulter would stand in the way of a deserving borrower in getting financial assistance. Highlighting on the relationship between a borrower and the Corporation, the Hon''ble Supreme Court observed that the relationship between the Corporation and the borrower was that of a creditor and debtor. That basic feature could not be lost sight of. A Corporation was not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. It had to recover the amounts due, so that fresh loans could be given.

(b) Referring to U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , the Hon''ble Supreme Court observed that promoting industrialization, which was one of the objects of the Act, would not serve public interest at the cost of public funds. Adverting to Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, wherein directions were issued by the Hon''ble Supreme Court with regard to exercising power under Section 29 of the Act, it held that those guidelines were issued to ensure fair play, but fairness cannot be a one way street, where the borrower has no intention to repay and would adopt pretexts and ploys to avoid payment, he could not make the grievance that the Corporation was not acting fairly, even if requisite procedures had been followed. That fairness required by the Corporations could not be carried to the extent of disabling them from recovering what is due to them. Thus, even a wrong decision by it, was not open to challenge. As to what could be gone into by the courts could be only decision-making process or mala fides in making a decision. It was not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation.

Referring to the guidelines issued in Mahesh Chandra, the Hon''ble Supreme Court held that those guidelines were contrary to the law and intent of Section 29 and that Mahesh Chandra did not lay down the correct law and thus overruled the decision. It was also opined that if the guidelines as indicated in Mahesh Chandra were to be followed, it would be giving a premium to a dishonest borrower. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected.

(c) In Micro Hotel P. Ltd. Vs. Hotel Torrento Limited and Others, , the question for consideration before the Hon''ble Supreme Court was, whether the Division Bench of Orissa High Court was justified in directing the Orissa State Financial

Corporation (OSFL) and Industrial Promotion and Investment Corporation of Odisha Ltd. (IPICOL) to offer afresh the benefit of one-time settlement (OTS) scheme to M/s. Hotel Torrento Ltd. The further question was whether the High Court was right in ordering dispossession of the appellant - (auction-purchaser) and putting respondent No. 1 back in possession. Going through the factual aspects in detail including the fact that an agreement of sale was executed by the OSFC in favour of the auction-purchaser and possession was also handed over to the auction-purchaser, the Hon''ble Supreme Court held the Division Bench of the Orissa High Court had erroneously reopened the lis and had issued illegal directions by permitting the borrower to offer fresh benefit of one time settlement. Holding that Mahesh Chandra had been overruled, the Hon''ble Supreme Court held that there was no legality in the procedure conducted by the Corporation, which had been given the liberty to proceed under Section 29 of the Act by a co-ordinate Bench of the Orissa High Court.

(d) In Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, , the Hon''ble Supreme Court held that in the matter of sale by a SFC in exercise of power conferred on it under Section 29 of the Act, the scope of judicial review was confined to two circumstances, namely, (1) where there was a statutory violation on the part of the State Financial Corporation, or (2) whether the State Financial Corporation acted unfairly i.e., unreasonably. Thus, exercising its jurisdiction under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the acts and deeds of the SFC.

(e) In Sri Lakshminarayana Industries, Gangavathi v. Karnataka State Financial Corporation, Bangalore and others (2009 (2) KLJ 32 (DB), this Court held that when the unit of the borrower was brought to sale by inviting bids from intending buyers and having accepted offer from an intending buyer and receiving the price agreed upon, it was arbitrary and unfair on the part of the Corporation to have repudiated its obligations under concluded contract and to refuse to put the buyer in possession of assets by executing sale deed, on the ground that deal was vitiated by collusion by its officers with buyer, and that it had decided to invite fresh bids with a view of getting better offer. In that case, a mandamus was issued to the Corporation to put the buyer in possession of assets by execution of the sale deed. In that case, KSFC had unilaterally cancelled the sale transaction, which again was held to be arbitrary. The offer of the appellant therein was accepted and had been acted upon by KSFC, by receiving the money and adjusting to the loan amount and thereafter it had issued the letter of confirmation. The transaction had assumed the shape of a concluded contract and hence, it was held that there was an obligation on the part of KSFC to have handover possession and transfer the asset to the appellant therein. On the above premise and by applying the rule of estoppel incorporated under Section 115 of the Indian Evidence Act, 1872 as well as Article 14 of the Constitution, the Division Bench directed KSFC to execute and register the sale deed in the name of the appellant therein and to handover possession of the entire assets to the appellant within the time frame fixed i.e., within a period of three months.

(f) In Rekha Rajendra Vs. The Karnataka State Financial Corporation and Sri Ganesh Prasad, , it was held that, after the confirmation of sale, the borrower was not entitled to a resale of the property on the premise that there was a better offer and the writ petition filed by the borrower was rejected."

48. In the instant case, as noted above, the outstanding dues as on 31/07/2006 was Rs. 33,80,650/-. As that amount had not been paid, the mortgage property was brought to sale and the petitioner paid a sum of Rs. 18,45,000/- as the highest bid on 17/10/2007. In fact, respondent No. 3 was given an opportunity to identify any other party who was willing to pay a higher price than the petitioner herein. But no such better offer was made by respondent No. 3. If really respondent No. 3 intended to redeem the mortgage, then it ought to have been under the provisions of the T.P. Act. Redemption of mortgage cannot be in terms of the OTS scheme. The two aspects are distinct and have to be kept separate. A borrower particularly, from KSFC as in the instant case, has two options, either to pay the outstanding dues under the extant OTS Scheme or to repay as a mortgagor, under the provisions of the T.P. Act. If the outstanding dues are paid under the relevant OTS Scheme then it is not a case of redemption of mortgage under the T.P. Act. OTS Scheme is a beneficial scheme applicable to borrowers subject to certain terms and conditions. It cannot be equated to redemption of a mortgage.

49. In the instant case, it has already been held that the payment of outstanding dues by respondent No. 3 was not under the OTS Scheme. Then, it has to be examined as to whether the payment of the dues by Respondent No. 3 herein was an instance of redemption of mortgage in terms of the provisions of the T.P. Act. As Sections 58 and 60 of T.P. Act and the relevant rulings, mortgage money would include not only the principle amount but also the interest due under the mortgage. The interest has to be calculated in terms of the deed of mortgage. If that is so, then the outstanding dues of respondent No. 3 as on 31/07/2006 was Rs. 33,80,650/- when the sale negotiations were being held. That amount of course, would have gone on increasing with the passage of time. If respondent No. 3 intended to redeem the mortgage, then it had to be strictly in terms of Section 60 of T.P. Act as well as the deed of mortgage executed by respondent No. 3. But that has not been done in the instant case. The repayment of dues by respondent No. 3 is purportedly under the OTS scheme but in fact contrary to the provisions of the scheme as discussed above and it has been held that the acceptance of dues under the OTS Scheme in the instant case was illegal. The repayment of the dues in the instant case is also not in accordance with section 60 r/w Section 58 of the T.P. Act, dealing with redemption of mortgage. Therefore, contention of the learned counsel for KSFC that if the payment of dues cannot be held to be under the OTS Scheme then it must be construed as redemption of mortgage under Section 60 of the T.P. Act, cannot be accepted as the monies that have been repaid by respondent No. 3 is not in terms of the said

Act. In fact, that was not even the intention of the parties when KSFC accepted the dues from Respondent No. 3. Therefore, in the instant case, there has been no redemption of the mortgage in terms of Section 60 of the T.P. Act and accordingly, Point No. 2 is answered in the negative.

50. It is reiterated that the acceptance of the dues paid by respondent No. 3 by KSFC is an instance of arbitrary exercise of power as the same has not been in terms of either the relevant OTS Scheme nor under Section 60 of the T.P. Act by way of redemption of mortgage. In fact, on account of there being non payment of the debt that KSFC auctioned the mortgage property. KSFC is not supposed to lend money and then accept only a pittance towards the recovery of the outstanding debts. It is expected to recover the amounts due in accordance with law. In fact, the Hon''ble Supreme Court has opined that fairness required by the Corporations could not be carried to the extent of disabling them from recovering what is due.

51. In the instant case, having brought the mortgage property to auction and having taken a decision to handover possession of the same to the petitioner, KSFC could not have gone back on its decision arbitrarily by accepting a portion of the outstanding dues from respondent No. 3 and thereby closing the account. The decision to extend the time to pay the dues was illegal, arbitrary and not in accordance with the applicable OTS Scheme. Further, there was no application of mind by the KSFC as to whether the dues paid by respondent No. 3 was in accordance with Section 60 of the T.P. Act by way of redemption of mortgage. In the instant case, the acceptance of the dues from respondent No. 3 and the closure of the account is not in a manner known to law. In fact, respondent No. 3 had on several occasions stalled the recovery proceedings. Even after acceptance of the consideration amount from the petitioner by issuance of a sale certificate, instead of handing over possession of the mortgage property to the petitioner by executing a registered sale deed, KSFC played into the hands of respondent No. 3, who was a chronic defaulter, by showing indulgence to it particularly, when the matter was pending before this Court. KSFC in the instant case has acted unfairly and unreasonably and has shown favouritism to respondent No. 3. The stand of the KSFC in this case is to virtually repudiate its obligation under a concluded contract vis-?-vis the petitioner. It is clear that by accepting a portion of the outstanding dues from respondent No. 3, KSFC did not intend to keep up its promise to the petitioner regarding execution of sale deed and handing over possession to the petitioner. Even though there is no cancellation of the sale transaction with the petitioner, letter dated 12/12/2007 Annexure "H" written by KSFC to the petitioner informing that it had extended time to the third respondent to avail the OTS facility was not in consonance with the action it had taken until 17/10/2007. In fact, the Division Bench of this Court in Sri Lakshminarayana Industries, Gangavathi, referred to above, has held that the rule of estoppel incorporated under Section 115 of the Indian Evidence Act and Article 14 of the Constitution would squarely apply in such circumstances. In that case, the Division Bench directed KSFC to execute and register the sale deed in

the name of the appellant therein and to hand over possession of the assets within a time frame.

Re. Point No. 3:

52. In view of the aforesaid discussion and the findings given on Point Nos. 1 and 2 it is held that the KSFC was not justified in accepting the dues paid by respondent No. 3 and closing the account on 01/04/2008. Point No. 3 is accordingly answered.

Re. Point No. 4:

53. The next question that has to be considered is as to the nature of relief that could be granted to the petitioner. The matter is at the stage where the petitioner, being the highest bidder for the mortgage property, has sought a direction to the KSFC to hand over possession of the mortgage property sold pursuant to acceptance of its tender dated 17/10/2007. A declaration is also sought that communication dated 12/12/2007 is illegal and impermissible in law. By that communication, KSFC extended time to respondent No. 3 for availing one time settlement. In view of the finding given on Point No. 1, Annexure "H" is illegal, as no extension of time could have been given to respondent No. 3 to remit the dues under the extant OTS Scheme and is hence, quashed. The only point now to be considered is as to whether possession of the mortgage property must be given to the petitioner with a direction to execute a deed of conveyance in favour of the petitioner. The decision of the Hon''ble Supreme Court in L.K. Trust was distinguished by petitioner''s counsel to contend that the observations made therein were in favour of the petitioner herein inasmuch as the Hon''ble Supreme Court had observed in that case to the effect that if the appellant therein was keen to complete its title over the mortgage property, then nothing prevented it from instituting appropriate proceedings to compel respondent No. 1 therein to execute the sale deed in its favour and getting it registered, but admittedly, no such step was taken by the appellant therein. It was submitted, that in contrast, in the instant case, petitioner had approached this Court seeking possession of the mortgage property and when respondent No. 3 had not remitted the outstanding dues in terms of the OTS Scheme or Section 60 of the T.P. Act, then it was precluded from asserting its right of redemption. But in the very same judgment the Hon''ble Supreme Court opined that there is no equity or right in property created in favour of a purchaser by the contract between the mortgagee and the proposed purchaser. That the right of redemption embodied in Section 60 of the T.P. Act is available to the mortgagor unless it has been extinguished by the act of the parties or by a decree of a Court. In fact, the power given to the State Financial Corporations ["SFCs"] under Section 29 of the Act, is substantially, the same as the power created under Section 69 of the T.P. Act and it was done after intimation to respondent No. 3. In fact, by acceptance of bid amount from the petitioner on 17/10/2010, KSFC accepted the offer made by the petitioner and infact, there was a concluded contract between them.

54. It is in the above premise that the petitioner is seeking the aforesaid reliefs. Thus, it is held that KSFC has exercised its right of foreclosure of the mortgage. In the circumstances, KSFC is directed to take an account of what was due by respondent No. 3 as on 31/03/2008 with regard to the principle and interest and other costs, charges and expenses with regard to the loans disbursed to respondent No. 3, on or before 5th January, 2015 and communicate to respondent No. 3, the outstanding dues, with the copy of the same being sent to the petitioner herein. While doing so, KSFC is restrained from rescheduling the loan or granting any waiver of interest or other charges, the reason being that the cut off date is reckoned as 30/03/2008 instead of today i.e., date of this order. If respondent No. 3 pays the outstanding dues within a period of two months from the date of receipt of that communication then, KSFC shall accept the same and deliver to respondent No. 3 all documents relating to the mortgaged property and retransfer the property to respondent No. 3, free from mortgage and all encumbrances and put respondent No. 3 in possession thereof. But if the payment is not made by respondent No. 3 within the said period, then KSFC shall execute absolute sale deed in favour of the petitioner and hand over possession of the mortgaged property to the petitioner within a period of two weeks from the last date for payment to be made by respondent No. 3 i.e., two months from date of receipt of communication by KSFC. It is made clear that if the payment is not made by respondent No. 3 within the aforesaid time frame, then respondent No. 3 shall not be entitled to make any payments thereafter and respondent No. 3 would be debarred of its right to redeem the mortgage as well as to seek any extension of time for payment in the aforesaid terms. In case, respondent No. 3 repays the outstanding dues and seeks redemption of the mortgage, then KSFC shall return the amount of Rs. 18,45,000/- received from the petitioner with interest at the rate of 12% p.a. from 17/10/2007 till the date of refund to the petitioner. The said interest amount shall also be collected by KSFC from respondent No. 3 along with the payment of outstanding dues if made, by respondent No. 3 to KSFC. In case, respondent No. 3 does not pay the outstanding dues and the interest amount to be paid to the petitioner in time, and thereby loses its right of redemption, then the amount already paid by respondent No. 3 shall be adjusted to its outstanding dues.

55. In the result, writ petition is disposed in the aforesaid terms. Parties to bear their respective costs of this proceeding.