
(2014) 11 MAD CK 0354

In the Madras High Court

Case No : Writ Petition Nos. 33782 and 33783/2013 and M.P. Nos. 1 to 4/2014
in W.P. No. 33782/2013

Simon's Foot Wear Pvt. Ltd.

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 10, 10, 11, 11, 12, 12
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 18, 18(1)

Citation : (2015) 4 BC 92 : (2015) 2 MLJ 166

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

P.R. Shivakumar, J.—W.P. No.33782/2013 has been filed for the issue of a Writ of Certiorari calling for the records relating to the orders dated 23.01.2012, 07.02.2012, 23.02.2012, 14.03.2012 and 24.06.2013 made in S.A. No.9/2012 by the Debts Recovery Tribunal - II, Chennai and quash the same. W.P. No.33783/2013 has been filed for the issue of a Writ of Certiorarified Mandamus calling for the records of the Debts Recovery Appellate Tribunal, Chennai from the 4th respondent relating to its order dated 27.09.2013 made in I.A. No.803/2013 in AIR No. 608/2013 (S.A. No.9/2012) to quash the same and to direct the 4th respondent appellate tribunal to entertain petitioner's application for condonation of delay in filing the appeal, to condone the delay and to entertain the appeal and to dispose of the same on merits in accordance with law.

2. The facts leading to the filing of these writ petitions are as follows:

i) The second petitioner Arul Neri Selvan is the Managing Director of the first petitioner company. The first petitioner company was extended financial assistance by the first respondent bank (Indian Bank) with the following limits:

a) Cash Credit Limit : Rs.20.00 Lakhs

b) Medium Term Loan-I : Rs.47.50 Lakhs

c) Medium Term Loan-II : Rs.43.00 Lakhs

As the loan amount was not repaid in accordance with the terms of the conditions on which the agreed facilities were extended, the first petitioner's loan Account was classified as Non-Performing Asset (NPA) on 31.03.2011 and the first respondent bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act) on 07.05.2011 claiming a sum of Rs.1,02,91,515/- towards the amount due on the loan account as on 01.12.2010. The first petitioner issued a reply dated 20.07.2001 objecting to the invocation of the proceedings under the SARFAESI Act. However, overruling the objections, the first respondent bank issued a possession notice under Section 13(4) of the Act on 18.08.2011 in respect of the properties given as security for the creation of mortgage by deposit of title deeds, after serving a demand notice under Section 13(2) of the SARFAESI Act and after rejecting the objections raised by the petitioners in the reply notice dated 20.07.2011. The first respondent bank took possession of the secured assets under Section 13(4) of the SARFAESI Act.

ii) Thereafter Sale Notice dated 09.09.2011 came to be issued. The said sale notice was challenged before the third respondent Tribunal in S.A. No.122/2011 in which a prayer for interim stay had also been made in S.A. No.112/2011. Ultimately the stay application came to be dismissed by the third respondent Tribunal on 05.12.2011. Thereafter a fresh auction sale notice dated 17.12.2011 came to be issued fixing the upset price in respect of item of the properties mentioned in the schedule to the sale notice as Rs.1,10,00,000/- for the auction proposed to be held on 21.01.2012. The said sale notice was challenged under Section 17 of the SARFAESI Act in S.A. No.9/2012 and the third respondent Tribunal dismissed the said application S.A. No.9/2012 by order dated 20.01.2012 making an observation that the petitioners had represented that they had identified intending purchasers who were willing to pay a sale consideration which would be more than the upset price fixed and directing the first respondent bank to receive sealed tenders from the intending purchasers and produce the same before the third respondent Tribunal on 23.01.2012 without opening. The Debts Recovery Tribunal also permitted the petitioner to bring intending purchasers to the Tribunal before 4.00 p.m. on the said date. As many as 27 bids were received by the first respondent bank for all the three items of the properties and the same were placed before the third respondent Tribunal. The third respondent Tribunal conducted the auction at 4.30 p.m. on the said date and the second respondent in both the writ petitions, namely Winston Raja was declared the highest bidder in respect of item Nos. 1 and 3 of the property, as he had quoted a sum of Rs.1,10,05,000/- and Rs.13,05,000/- respectively for item Nos. 1 and 3.

iii) Since the writ petitioners represented that they needed 15 days time to

identify persons who would offer more amount as sale consideration, the sale was not concluded and the auction was postponed to 07.02.2012. On 07.02.2012, the writ petitioners represented that they entered into an agreement with Winston Raja, the highest bidder/second respondent whereby the second respondent had agreed to buy item No. 1 of the immovable property alone by increasing his offer for item No. 1 alone to Rs.1,25,00,000/- from Rs.1,10,05,000/- and come forward to withdraw his bid in respect of item No. 3. Pursuant to the same, Debts Recovery Tribunal accepted the improved bid for the first item alone in favour of the 2nd respondent Winston Raja for a sum of Rs.1,25,00,000/-, allowed the second respondent to withdraw his bid in respect of the third item of properties. On 07.02.2012 itself, the second respondent/auction purchaser also paid 25% of the agreed sale consideration after adjusting the EMD already paid, the date on which the agreement between the petitioners and the second respondent came to be recorded. The balance 75% of the sale consideration was to be paid on or before 23.02.2012. However, on 23.02.2012, in the presence of the counsel for the petitioners, the third respondent Tribunal passed an order extending time for deposit of balance amount of sale consideration up to 14.03.2012 with an observation that in case of default, Rs.31,25,000/- paid representing 25% of the bid amount would be forfeited.

iv) On 14.03.2012, when the matter came up before the third respondent Tribunal, the second respondent (auction purchaser) made payment of the balance amount of sale consideration by producing four demand drafts dated 13.03.2012 (three for the sum of Rs.25,00,000/- each and the fourth one for the balance amount of Rs.18,75,000/-) drawn in favour of the Authorised Officer of the Indian Bank. When the said demand drafts were accepted by the counsel for the first respondent bank, the first respondent bank was directed to appropriate the said amount towards the entire sale consideration and the Authorised Officer of the first respondent was directed to confirm the sale in favour of Winston Raja to issue a sale certificate within seven days. However, the first respondent bank wanted to appropriate a sum of Rs.3,75,000/- towards the fees to the Recovery Agents from the balance sale consideration and retain the other securities for the payment of the balance loan amount. The said contention was rejected by the third respondent Tribunal by order dated 14.03.2012 and it directed the bank to appropriate the sale consideration in full quit of the claim of the bank against the borrower/guarantor.

v) As against the said order of the Debts Recovery Tribunal, in so far as it relates to the rejection of the claim of the bank that it did have a right to include the fees paid to the Recovery Agents in the loan account, the first respondent Bank filed an appeal in R.A.(S.A.) No. 34/2012 against S.A. No.9 of 2012 before the Debts Recovery Appellate Tribunal (4th respondent) under Section 18 of the SARFAESI Act. The Debts Recovery Appellate Tribunal, by its judgment dated 28.01.2013, allowed the said appeal and remitted the Securitisation Application No. 9/2012 back to the third respondent Tribunal with a direction to hear the matter afresh and dispose of the same in accordance with law. The Debts

Recovery Appellate Tribunal also directed the appellant bank to produce the statement of expenditure on various heads and cooperate with the Debts Recovery Tribunal to enable it to come to a right conclusion.

vi) When the matter was taken up before the Debts Recovery Tribunal (3rd respondent) after remand, the Authorised Officer of the first respondent bank filed a memo dated 24.06.2013 not pressing the claim for the payment of fees to the Recovery Agent from the sale proceeds. The said Memo was recorded and accordingly, a fresh order dated 24.06.2013 came to be passed by the third respondent Tribunal. Accordingly, S.A. No. 9/2012 was disposed of as nothing survived in the Securitisation Application to be adjudicated upon. In the said order dated 24.06.2013, the writ petitioners were permitted to remove the plant, machineries and other movables lying in the immovable property sold to the second respondent within 30 days from the date of the order of the third respondent Tribunal i.e. on or before 24.07.2013. It was further observed there in that if the writ petitioners would fail to remove them from the sold out secured asset, the Authorised Officer of the bank would hand over the secured assets along with the plant and machineries and other movables lying there to the second respondent.

vii) As against the said order of the third respondent Tribunal, the writ petitioners preferred an appeal under Section 18 in AIR No. 608 of 2013 (S.A. No.9 of 2013) along with an application in I.A. No.808/2013 under Section 5 of the Limitation Act to condone the delay in presentation of the appeal, as it was not presented within 30 days from the date of receipt of the copy of the order passed by the Debts Recovery Tribunal. The said application for condoning the delay in filing the appeal under Section 18 of the SARFAESI Act was dismissed by the Debts Recovery Appellate Tribunal by order dated 27.09.2013 holding that the Debts Recovery Appellate Tribunal did not have the power to condone the delay in filing the appeal under Section 18 of the SARFAESI Act.

viii) Meanwhile, the Recovery Officer of the first respondent bank issued a sale certificate in respect of the first item of the property in favour of one Jamila wife of Mahil Raj based on the alleged nomination made by the successful bidder, namely the second respondent herein. However, the propriety of such nomination and issuance of sale certificate in favour of a person who was not the successful bidder was not questioned by the petitioners. Meanwhile, the appeal filed by the bank under Section 18 of the SARFAESI Act, namely R.A.(S.A.) No. 34/2012 came to be allowed remanding S.A. No.9/2012 back to the Debts Recovery Tribunal-II for passing a fresh order regarding payment of fees to the Recovery Agent. The said application for the second time came to be disposed of by order dated 24.06.2013. Thereafter, the sale certificate issued in favour of Jamila was cancelled and a sale certificate came to be issued in favour of the successful bidder, namely Winston Raja, the second respondent herein on 29.07.2013.

3. The prayer in the writ petition No. 33782/2013 has been made based on the following contentions:

i) The Debts Recovery Tribunal does not have the power under Section 17 of the SARFAESI Act to extend the time in favour of the auction purchaser for depositing the balance amount of the bid amount beyond 15 days and in this case, the third respondent Tribunal chose to pass an order in S.A. No.9/2012 on 23.02.2012 extending time for payment of the balance 75% of the sale consideration from 23.02.2012 to 14.03.2012. According to the writ petitioners, the said order extending time for depositing the balance sale consideration was one without jurisdiction and therefore it should be construed to be non-est in the eye of law.

ii) Though the successful bidder deposited the balance sale consideration within the extended time and the sale was confirmed in his favour, a sale certificate came to be issued not in the name of the successful bidder but in the name of one Jamila who was said to be the nominee of the successful bidder and such issuance of sale certificate was against the scope of the provisions dealing with the issuance of the sale certificate by the Authorised Officer.

4. The learned Senior Counsel appearing for the writ petitioners argued that the failure of the second respondent (successful bidder) to deposit the balance amount of sale consideration within 15 days, should have resulted in the forfeiture of the amount paid by him towards 25% of the sale consideration and the property should have been brought for fresh auction by issuing a fresh sale notification; that since it was not done and the successful bidder, whose bid was subsequently enhanced with the consent of the petitioners, was allowed to pay the balance amount of consideration beyond 15 days, but within the time extended by the Debts Recovery Tribunal - II, the confirmation of the sale in his favour ought not to have been made and that in any event, since the sale certificate came to be issued in favour of Jamila (who was not the successful bidder) the Authorised Officer lost his power of issuing a fresh sale certificate in favour of the successful bidder without conducting re-auction.

5. It is an admitted fact that as against the order dated 14.03.2012 passed by the Debts Recovery Tribunal in S.A. No.9/2012 confirming the sale in favour of the successful bidder and rejecting the contention of the first respondent bank that it was entitled to the recovery of a sum of Rs.3,75,000/- towards the fees paid to the Recovery Agent and that till such payment, it would keep the other securities with it directing the first respondent bank to appropriate the sale proceeds towards the final and full settlement of the claim of the bank against the borrower/guarantor and thereby no appeal came to be filed by the writ petitioners before the DRAT under Section 18 of the SARFAESI Act. On the other hand, it was the first respondent bank which preferred an appeal in R.A.(S.A.) No. 34/2012 challenging that part of the order of the Debts Recovery Tribunal not permitting the first respondent bank to include the fees paid/payable to the recovery agent in the amount due from the borrower/guarantor.

6. Of course, the Debts Recovery Appellate Tribunal (4th respondent), after hearing, remanded S.A. No.9/2012 by its order dated 28.01.2013. In the said

appeal an interlocutory application came to be filed for stay of that part of the order rejecting the claim of the bank to recover fees paid to the Recovery Agent and to retain the other securities till the liabilities were fully satisfied or till the disposal of the appeal. In the said IA, the writ petitioner No. 2 filed a counter affidavit for himself and on behalf of the first writ petitioner supporting the order of the Debts Recovery Tribunal dated 14.03.2012 and praying for the dismissal of the said petition on the basis of his contention that the appeal itself was filed as an abuse of process of law. However, the Debts Recovery Appellate Tribunal, by order dated 28.01.2013, set aside the order of the Debts Recovery Tribunal-II, Chennai dated 14.03.2012 made in S.A. No.9/2012 and directed the Debts Recovery Tribunal-II to hear the matter afresh and dispose of the same in accordance with law, with a further direction to the bank to give the statement of expenditure on various heads and cooperate with the Tribunal to enable it to come to a right decision.

7. Since the order dated 14.03.2012 was not challenged by the writ petitioners by filing an appeal and on the other hand they supported the said order, they cannot challenge the same, at this distance of time, directly in this court by filing a writ petition invoking Article 226 of the Constitution of India. After remand, the Authorised Officer of the first respondent bank filed a Memo before the Debts Recovery Tribunal not pressing the Bank's claim for payment of fee paid to the Recovery Agent from the sale proceeds. The same was recorded and a fresh order dated 24.06.2013 came to be passed by the Debts Recovery Tribunal-II confirming the auction sale in favour of the second respondent and directing the writ petitioners to remove the plant and machinery and other movables on or before 24.07.2013 from the secured asset (first item) sold to the second respondent,.

8. As a sale certificate in favour of Jamila came to be issued during the pendency of the appeal before the Debts Recovery Appellate Tribunal, the learned senior counsel appearing for the writ petitioners would submit that the sale certificate issued in favour of Jamila (a third party) was against the provisions of the Act and the Rules framed thereunder. However, the fact remains that after the disposal of the appeal and remand of S.A. No.9/2012 and consequent disposal of S.A. No.9/2012 by a fresh order, the earlier sale certificate issued in favour of Jamila stood cancelled and a fresh sale certificate in favour of the second respondent came to be issued on 29.07.2013. In this regard, it is the contention of the learned senior counsel for the writ petitioners that once a sale certificate came to be issued pursuant to the order of the Debts Recovery Tribunal confirming the sale, the Authorised Officer became functus officio; that thereafter the Authorised Officer could not exercise the power to issue a fresh sale certificate and that therefore, the sale certificate dated 29.07.2013 issued in favour of the second respondent in respect the first item is non-est in the eye of law.

9. As against the confirmation of sale and issuance of the sale certificate, the writ

petitioners did have their remedy of filing an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal. The appeal remedy is an effective and efficacious remedy. When such an effective and efficacious remedy is available, this court will decline exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Furthermore W.P. No.33782/2013 came to be filed challenging the orders of the Debts Recovery Tribunal -II, Chennai dated 23.01.2012, 07.02.2012, 23.02.2012, 14.03.2012 and 24.06.2013 made in S.A. No.9/2012. So far as the previous orders, namely the orders dated up to 14.03.2012 are concerned, they got superseded by the order of the Debts Recovery Appellate Tribunal and also by the consequential order passed by the Debts Recovery Tribunal on 24.06.2013. Hence the challenge made to the orders made in S.A. No.9 of 2012 prior to 24.06.2013 deserves to be rejected as infructuous.

10. So far as the challenge made to the order dated 24.06.2013 is concerned, since an appeal remedy is available the writ petitioners ought to have exhausted the appeal remedy before approaching this court with this writ petition. Of course it is true that the writ petitioners did file an appeal before the Debts Recovery Appellate Tribunal, Chennai in Appeal S.R. AIR No. 608/2013. But the said appeal was not filed within 30 days as contemplated under Section 18(1) of the SARFAESI Act, and hence it was filed along with an application in I.A. No.803/2013 under Section 5 of the Limitation Act to condone the delay in preferring the appeal. The Debts Recovery Appellate Tribunal dismissed the said petition holding that Section 5 of the Limitation Act is not applicable to an appeal contemplated under Section 18 of the SARFAESI Act. Accordingly, the appeal was also rejected.

11. So far as the dismissal of the said application under Section 5 of the Limitation Act and the rejection of the appeal as barred by limitation are concerned, the writ petitioners have preferred W.P. No.33783/2013. The order of the Debts Recovery Appellate Tribunal dismissing the application under Section 5 of the Limitation Act and rejecting the appeal as out of time cannot be said to be erroneous, as it is based on the judgment of another Division bench of this court, viz. a common judgment dated 28.08.2012 made in Dr. Zubida Begum and Others Vs. Indian Bank and Others, . Of course a Division Bench of Karnataka High Court in Sri C. Laxman Gowda and Sri Vasudevagowda Vs. Debt Recovery Appellate Tribunal and Others, took a different view that the Debts Recovery Appellate Tribunal did have the power to condone the delay in filing the appeal, as the saving clause in Section 29 of the SARFAESI Act would attract the provisions of Sections 5 to 24 of the Limitation Act, 1963.

12. When the very same issue arose before the High Court of Delhi, a Division Bench of the said High Court, by its judgment dated 10.01.2014 in Poonam Garg Vs. The Chief Manager, State Bank of Patiala and Another, took the very same view as the one taken by the Division Bench of this court and has held that Sections 4 to 24 of the Limitation Act stand excluded and the Debts Recovery

Appellate Tribunal does not have the power to condone the delay in filing of the appeal under Section 18 of the SARFAESI Act. No Larger Bench judgment or the judgment of the Supreme Court on this point has been cited on either side. As such, by the rules governing the precedents, we are bound by the earlier decision of a Division Bench of this court of equal strength. Therefore, we have to come to a necessary conclusion that the dismissal of I.A. No.803 of 2013 and rejection of appeal as not filed within time is correct. We do not see any reason to interfere with the decision of the Debts Recovery Appellate Tribunal dismissing I.A. No. 803 of 2013.

13. Even if it is assumed that Section 5 of the Limitation Act would be attracted to an appeal under Section 18 of the SARFAESI Act, on facts, the writ petitioners are not entitled to an order in their favour. After the rejection of the representation made by the petitioners pursuant to the receipt of section 13(2) Notice, possession notice under Section 13(4) came to be issued and possession was also taken. Thereafter, sale Notice dated 09.09.2011 also came to be issued. The said sale notice was challenged before the Debts Recovery Tribunal in S.A. No.122/2011 along with an application for interim order in S.A. No.112/2011 to stay further proceedings pursuant to the sale notice. The said petition (S.A. No.122/2011) was filed to declare the sale notice dated 09.09.2011 as illegal, void and unenforceable. No stay was granted and an order came to be passed permitting the bank to proceed with the sale as per the sale notice, on the ground that the applicant therein submitted a letter coming forward to sell the property and discharge the debt.

14. By an order dated 11.10.2011, the Debts Recovery Tribunal - II (third respondent) passed an order upholding the impugned sale notice dated 09.09.2011. However the Authorised Officer of the first respondent Bank was permitted to proceed with the receipt of tenders and conduct auction permitting inter se bidding. But, on the appointed date as per the sale notice dated 09.09.2011 auction did not take place as scheduled. Hence both the Securitisation Application viz. S.A. Nos.112 and 122/2011 came to be dismissed as infructuous and the first respondent bank had to issue a fresh sale notice. Even thereafter, the petitioners did not come forward to discharge the debt. Hence second sale notice dated 17.12.2011 came to be issued fixing the date of sale as 21.01.2012. The amount due as on 16.12.2011 was noted as Rs.1,18,72,547/-.

15. As against the said sale notice dated 17.12.2011, the writ petitioners filed S.A. No.9/2012 before the Debts Recovery Tribunal-II, Chennai. On 20.01.2012, a day prior to the date of auction, the writ petitioners submitted before the Debts Recovery Tribunal that they had already taken some of the intending purchasers to the Authorised Officer of the first respondent bank, but they were not permitted to inspect the secured assets. Though the said contention was denied by the representative of the first respondent bank, the Tribunal recorded the submission of the writ petitioners that they had identified some intending

purchasers who had come forward to buy the schedule properties for a sale consideration, which was more than the upset price fixed by the Authorised officer of the first respondent bank, permitted the first respondent bank to receive tenders, if any, from the intending purchasers with a rider that the Authorised Officer of the first respondent bank should not open the tenders till 23.01.2012 and that the same should be produced before the Tribunal at 11.00 a.m. on 23.01.2012. The writ petitioners were also permitted to bring any intending purchaser before the Debts Recovery Tribunal on 23.01.2012 before 4.00 p.m. and it was also directed that the intending purchasers, if any, brought by the writ petitioners, should be permitted to inspect the properties so as to enable them to take part in the inter se bidding.

16. At 4.00 p.m. on 23.01.2012 tenders were opened and inter se bidding was permitted. The second respondent Winston Raja emerged as the highest bidder having offered a sum of Rs.1,10,05,000/- for item No. 1 and he also emerged as the highest bidder for item No. 3, his bid being for Rs.13,05,000/-. Hence the auction in respect of items 1 and 3 was knocked down in favour of the second respondent herein. At that point of time, the learned counsel for the writ petitioners/borrowers (mortgagors) prayed for 15 days time for identifying any other prospective purchaser who would offer a higher price. Hence the S.A. No.9/2012 was directed to be called on 07.02.2012. The persons, who bid for item No. 2 had withdrawn their bids.

17. On 07.02.2012, the writ petitioners submitted before the Debts Recovery Tribunal that they had entered into an agreement with the second respondent Winston Raja whereby he had agreed to buy the immovable property in item No. 1 alone for a sale consideration of Rs.1,25,00,000/- and he would withdraw the bid in respect of the property described in item No. 3. Accordingly withdrawal of his bid for the third item was permitted and his offer for purchasing the first item for Rs.1,25,00,000/- was accepted. He paid 25% of the sale consideration after adjusting the EMDs paid for Item Nos. 1 and 3.

18. The said order accepting the offer of the second respondent Winston Raja can be construed as one recognising the agreement between the bank and the borrowers for selling the first item alone to the second respondent for a sum of Rs.1,25,00,000/-. On 07.02.2012 itself 25% of the bid amount was deposited by Winston Raja. The balance amount of Rs.93,75,000/- was directed to be paid on or before 23.02.2012. However, on 23.02.2012, the second respondent Winston Raja came forward with a prayer that, since he had applied for a loan, he needed 15 days time for payment of the balance amount of sale consideration. Accordingly, in the presence of the counsel for the writ petitioners, probably with their consent and more particularly without there being any objection, time was extended for payment of the balance sale consideration up to 14.03.2012. On 14.03.2012, the balance amount of sale consideration (75%) was paid by way of four demand drafts. Accordingly, the sale was confirmed.

19. On 14.03.2012, the first respondent bank had contended before the Debts

Recovery Tribunal that it was entitled to recover a sum of Rs.3,75,000/- from the writ petitioners (borrowers/guarantors) being the amount paid as fees to the recovery agents. The same was opposed by the writ petitioners. The Debts Recovery Tribunal, after considering the submissions made on both sides, rejected the contention of the bank and passed an order directing appropriation of the entire amount of sale consideration of Rs.1,25,00,000/- towards the full and final settlement of the claim of the bank against the borrower/guarantor. The order also discharged the mortgage in respect of item No. 2 noted in the sale notice. As against the confirmation of sale, the petitioners did not file any appeal. Nor did they file the writ petition immediately challenging the said order against the portion of the order negating the claim of the bank regarding the amount allegedly paid by the Bank as fees to the recovery agents, the first respondent bank preferred an appeal, which resulted in a judgment setting aside the order dated 14.03.2012 and remanding S.A. No.9/2012 for fresh disposal in accordance with law.

20. After such remand, the bank, by virtue of Memo dated 24.06.2013, withdrew its claim regarding the fee paid to the recovery agent. Accordingly a fresh order confirming the sale in favour of the second respondent, discharging the second item and permitting the petitioners to remove the plant and machineries, which were noted as third item in the sale notice came to be passed on 24.06.2013.

21. A consideration of the above said facts and circumstances will make it clear that the petitioners, who availed loan, were irregular in payment and the loan account came to be classified as NPA following proper procedure. The properties given as security for the loan amount were brought for sale by the first respondent bank under Section 13(4) of the SARFAESI Act. While challenging the said sale notice, the writ petitioners tried to stall the sale by contending that the intended purchasers identified by them were prevented by the first respondent bank from inspecting the property. In the light of the said representation, the Debts Recovery Tribunal gave a direction to the Authorised Officer of the first respondent bank to permit the intending purchasers to be brought by the petitioners to inspect the properties so as to enable them to take part in the inter se bidding. It also directed the Authorised Officer of the first respondent bank to receive sealed tenders and submit them to the Debts Recovery Tribunal without opening them. The date of opening of the said tenders was fixed as 23.01.2012.

22. On 23.01.2012 tenders were opened, inter se biddings were made and the second respondent emerged as the successful bidder for items 1 and 3. At that point of time, the writ petitioners wanted a further time of 15 days so that they could identify prospective purchasers who would offer a higher price. Hence without concluding the auction and keeping the bid of the second respondent alone in tact, the proceedings came to be adjourned to 07.02.2012, to enable the writ petitioners to bring the intending purchasers with better offers. The same was the reason why the sale was technically adjourned to 07.02.2012.

23. On 07.02.2012, the petitioners made second respondent Winston Raja to

increase his offer for item one alone from Rs.1,10,05,000/- to Rs.1,25,00,000/- and consequently withdraw his offer for item No. 3. Accordingly, the offer of the second respondent to purchase first item for Rs.1,25,00,000/- was accepted. On 23.01.2012, the writ petitioners themselves, by their act, procured time for the second respondent Winston Raja to make payment of 25% of the bid amount till 07.02.2012. The second respondent paid 25% of the sale consideration on 07.02.2012 and took time till 23.02.2012 to pay the balance amount of sale consideration. Again when the time for payment of the balance amount of sale consideration was to expire, the second respondent made a request for extension of time on 23.02.2012. At that juncture, the writ petitioners did not raise any objection for the extension of time. Accordingly, the Debts Recovery Tribunal extended time upto 14.03.2012.

24. Rule 9(4) of the Enforcement of Security Asset Rules 2002 provides that the balance amount of purchase price payable shall be paid by the purchasers to the Authorised Officer on or before the 15th day of confirmation of sale of the immovable property or such extended period as may be agreed upon in between the parties. In this case, of course there is no agreement in writing to which the petitioners were parties. However, the time extension was sought for not before the Authorised Officer but before the Debts Recovery Tribunal, that too, in the presence of the counsel for the writ petitioners (borrowers/guarantors). There is nothing to show that they raised any objection for granting such extension of time. Even after the grant of extension of time, they did not challenge the same immediately. On payment of the balance amount of sale consideration within the extended period, they received back the title deeds relating to the other properties and they did not express any grievance against the order of the Debts Recovery Tribunal directing the amount of Rs.1,25,00,000/- to be appropriated by the first respondent bank in full quit of its claim against the borrowers/guarantors. Only regarding the further claim made by the bank for a sum of Rs.3,75,000/- towards fee paid to the Recovery Agency, the dispute continued in R.A.(S.A.) No. 34 of 2012. The remand was made for the limited purpose of deciding the said issue. After remand the said claim of the first respondent bank was also given up. Accordingly, the order dated 24.06.2013 impugned in this W.P. No.33782/2013 came to be passed by the Debts Recovery Tribunal.

25. As pointed out supra, the petitioners were not diligent enough in preferring an appeal before the Debts Recovery Appellate Tribunal under Section 18 within the time allowed by Section 18(1) of the SARFAESI Act. Besides challenging the order of the Debts Recovery Appellate Tribunal rejecting the application to condone the delay and rejecting the appeal, they have also challenged the order of the Debts Recovery Tribunal dated 14.03.2012. As pointed out supra, the challenge made to the order dated 14.03.2012 has become infructuous as it was superseded by order dated 24.06.2013. So far as the order dated 24.06.2013 is concerned, apart from the availability of the alternative remedy of appeal, the bonafide of the petitioners in filing the writ petition is also questionable. Having chosen to challenge the order dated 14.03.2012 alone without challenging the

sale certificate in the manner known to law, the petitioners have chosen to file a petition for amendment of the prayer in the writ petition No. 33782/2013 in M.P. No.2 of 2014. Besides praying for amendment, they have also chosen to file a petition in M.P. No.1 of 2014 for impleading one Jamila, wife of Mahil Raj as 5th respondent and the State Industries Promotion Corporation Ltd., rep. by its General Manager as 6th respondent in W.P. No.33782/2013.

26. Jamila is sought to be impleaded on the premise that a sale certificate came to be issued in her favour on 21.03.2012, as the nominee of the auction purchaser. The said sale certificate dated 21.03.2012 came to be issued in favour of Jamila pursuant to the order dated 14.03.2012 made in S.A. No.9/2012. As against the said order, an appeal came to be filed in R.A.(S.A.) No. 34/2012 before the Debts Recovery Appellate Tribunal, Chennai. By order dated 28.01.2013, the said appeal was allowed and the order of the Debts Recovery Tribunal-II dated 14.03.2012 made in S.A. No.9/2012 was set aside and the said application was remanded back to the Debts Recovery Tribunal-II for fresh disposal. In view of the said order of the Debts Recovery Appellate Tribunal, the sale certificate dated 21.03.2012 issued in favour of Jamila stood nullified and it is also admitted by the writ petitioners that the said sale certificate was subsequently cancelled and such cancellation was not challenged by the said Jamila. After remand, the final order in S.A. No.9/2012 came to be passed on 24.06.2013, pursuant to which a fresh sale certificate dated 26.07.2013 came to be issued in favour of the auction purchaser, namely the second respondent herein.

27. Under such circumstances, the writ petitioners seem to have chosen to protract the case by filing petitions to implead the said Jamila and State Industries Promotion Corporation Limited. The State Industries Promotion Corporation Ltd. is sought to be impleaded on the premise that the land belongs to SIPCOT and the superstructure and the leasehold right by virtue of a long lease alone belonged to the writ petitioner and so that the order will be binding on the SIPCOT. It is not in dispute that whatever right the writ petitioners did have in the property alone was the subject matter of the sale. Hence the prayer for impleading SIPCOT also deserves rejection. Hence M.P. Nos.1 and 2 of 2014 are liable to be dismissed as vexatious.

28. After the order of the Debts Recovery Tribunal dated 24.06.2013 impugned in W.P. No.33782/2013 came to be passed, the writ petitioners have chosen to approach this court only as an abuse of process of court, in the hope that a re-auction may fetch more amount than the amount for which the property was sold. Having acquiesced-in in the sale of the first item for a sum of Rs.1,25,00,000/- and got back the title deeds relating to the other properties, the petitioners shall be estopped from challenging the sale in favour of the second respondent and contending that the sale certificate issued in his favour is null and void. The foregoing discussions will make it clear that even on merits the writ petitioners have not made out a case for condonation of delay in

preferring the appeal before the Debts Recovery Appellate Tribunal and that the order of the Debts Recovery Appellate Tribunal dismissing the application filed under Section 5 of the Limitation Act seeking condonation of delay in preferring the appeal under Section 18 of the SARFAESI Act can be sustained even on merits. We are of the considered view that there is no merit in the either writ petitions and both the writ petitions deserve to be dismissed.

In the result, both the writ petitions are dismissed. However there shall be no order as to cost. M.P. Nos.1 and 2 of 2014 are also dismissed. Consequently, the connected M.P. Nos.3 and 4 of 2014 are closed.