

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA**

WRIT PETITION Nos.2109, 2276 & 2751 OF 2020

W.P.No.2109 of 2020:

Between:

Indian Overseas Bank,
ARM Branch, 3rd Floor,
IOB Platinum Plaza,
Chikkadapally,
Hyderabad.

.... Petitioner

And

M/s. RA Pure Life Science Limited,
Erstwhile Eat India Brines Limited,
Plot No.167, Road No.13/A,
Jubilee Hills, Hyderabad,
Rep. by its Director Y. Bala Krishna Rao
and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 10.02.2023

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J.SREENIVAS RAO**

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J.SREENIVAS RAO**

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W.P.No.2109 of 2020:

Indian Overseas Bank,
ARM Branch, 3rd Floor,
IOB Platinum Plaza,
Chikkadapally,
Hyderabad.

.... Petitioner

Vs.

\$ M/s. RA Pure Life Science Limited,
Erstwhile Eat India Brines Limited,
Plot No.167, Road No.13/A,
Jubilee Hills, Hyderabad,
Rep. by its Director Y. Bala Krishna Rao
and others.

.... Respondents

!Counsel for the petitioner : Sri. E.Madan Mohan Rao

Counsel for the Respondents : Sri Ashok Anand Kumar for
respondents 1 to 3,
Sri. S.Niranjan Reddy for
rRespondents 4 and 5.

<Gist :

>Head Note:

? Cases referred:

(2014) 5 SCC 610
2018 SCC OnLine Hyd 178
(2017) 4 SCC 735
2018 SCC OnLine Hyd 783
WP 16870 of 2019 dt 21.4.2020 (TSHC-DB)
WP Nos. 25174 and 34129 of 2018 dt 8.1.2020
2018 SCC OnLineHyd 783

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT PETITION Nos. 2109, 2276 & 2751 OF 2020

COMMON ORDER: (*Per Hon'ble Sri Justice P Naveen Rao*)

W.P.No.2109 of 2020 is filed by Indian Overseas Bank challenging the order of the Debts Recovery Tribunal-II Hyderabad (for short the Tribunal) in S.A.No.268 of 2018 dated 7.1.2020. Petitioners in W.P.No.2276 of 2020 are auction purchasers of secured assets. They are also aggrieved by order passed by the Debts Tribunal in S.A. No. 268 of 2018 dated 7.1.2020. W.P.No.2751 of 2020 is filed by the borrower and its Directors, challenging very same order of the Tribunal in S.A.No.268 of 2018 dated 7.1.2020.

2. As these three writ petitions arise out of order of the Debts Recovery Tribunal-II Hyderabad in S.A.No.268 of 2018 dated 7.1.2020, they are considered together and common decision is made. Petitioners in W.P.No.2751 of 2020 are respondent Nos. 1 to 3 and petitioners in W.P.No.2276 of 2020 are respondent Nos. 4 and 5 in W.P.No.2109 of 2020. For the sake of convenience, parties are referred to as arrayed in W.P. No. 2109 of 2020.

3. Petitioner bank extended loan facilities to a tune of ₹ 30.93 crores to respondent no.1 represented by respondent nos. 2 and 3. Holding that respondents 1 to 3 defaulted in repayment of loan, petitioner bank classified the loan account as Non Performing Asset and has taken

recourse to the provisions of The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act, 2002'). On 30.10.2015 petitioner bank issued demand notice under Section 13 (2) of the Act, 2002. Said notice was also published in two daily newspapers on 1.11.2015. Holding that there was no response from respondents 1 to 3, on 27.5.2016 petitioner bank issued possession notice under Section 13 (4) of the Act, 2002 and said notice was also fixed on the property mortgaged to the petitioner bank. The petitioner filed O.A.No.765 of 2017 before the Debts Recovery Tribunal-II Hyderabad for recovery of the loan amount. The Tribunal passed orders on 19.1.2018. On 29.5.2018 bank issued notice of sale under Rule 8 of the Security Interest (Enforcement) Rules 2002 followed by Auction Notice dated 30.5.2018 and auctions were conducted on 10.7.2018. In the auctions conducted on 10.7.2018, respondents 3 and 4 were successful auction purchasers of the secured assets. The sales were confirmed on 19.07.2018.

4. Aggrieved by the auctions held on 10.7.2018, respondent Nos. 1 to 3 filed S.A. No. 268 of 2018 before the Tribunal. The Tribunal by order dated 7.1.2020 partly allowed the Application quashing the e-auction sales held on 10.7.2018 while upholding the possession notice dated 27.5.2016. The Tribunal further observed that the said order would not preclude the respondent bank therein to initiate measures afresh for sale of secured assets. The Tribunal accepted the

contention of respondents 1 to 3 on the issue of not maintaining 30 days gap after notice of sale issued under Rule 8 (6) of the Rules 2002 and before notice issued to conduct e-auction under Rule 9(1) of the Rules 2002 and held that as notice of sale under Rule 8 (6) and auction notice under Rule 9 (1) were issued on the same date without maintaining 30 days gap, the process is vitiated. As all the three parties to S.A. No. 268 of 2018 are aggrieved by the decision of the Tribunal, these three writ petitions are filed. Though Section 18 of the Act envisages remedy of appeal to Debts Recovery Appellate Tribunal, contenting that there was no Presiding Officer in the Appellate Tribunal at Calcutta, these writ petitions are filed. Having regard to the issue involved and as all the parties to the Securitization Application have filed these writ petitions challenging the order of Debts Recovery Tribunal, the writ petitions are considered on merits without relegating the petitioners to avail the remedy of appeal.

5. We have heard learned senior counsel Sri E.Madan Mohan Rao for petitioner bank, learned senior counsel Sri Ashok Anand Kumar for respondents 1 to 3 and learned senior counsel Sri S.Niranjan Reddy for respondents 4 and 5.

6. Submissions of learned senior counsel Sri Ashok Anand Kumar:

6.1. He would submitted that as per the scheme of the Act, 2002 and Rules made there under, there has to be two separate notices, one under Rule 8 (6) and another under Rule 9 (1) of the Rules, 2002,

whereas a common notice was issued, therefore commencement of the process to conduct auction itself was vitiated. He would further submit that after issuance of notice under Rule 8 (6) specifying clearly 30 days time proposing to sell the secured asset, after 30 days from the date of notice served on the borrower under Rule 8(b) notice under Rule 9 (1) should be issued fixing the auction date. This timeline is mandatory and non compliance thereof vitiates the process of conducting the auction. As the mandatory timeline is not maintained before auction was conducted on 10.7.2018, auction held on 10.7.2018 was ex-facie illegal and Tribunal has rightly set aside the auction.

6.2. Learned senior counsel has taken us through various stages required compliance in Rule 8. According to learned standing counsel, Rule 8(1) requires Authorized Officer of the secured creditor to take possession of the secured asset by delivering possession notice to the borrower and by affixing the possession notice on the outer door or at a conspicuous place of the property. This requirement was not observed. Further, as required by sub rule 2, the possession notice should also be published as soon as possible but not later seven days than from the date of taking possession in two leading newspapers. Even this was not followed. Further sub rule 2 does not dispense with personal notice. According to learned senior counsel sub-rule 5 requires that before effecting sale of the immovable property referred to in sub rule 1 of Rule 9, the authorized officer should obtain valuation of the property and fix reserve price, but this was not followed. Sub-rule 6 requires that the

Authorized Officer shall serve to the borrower a notice of thirty days for sale of the immovable secured asset as mentioned under sub-rule 5. Sub-rule 7 requires every notice of sale shall be affixed at a conspicuous part of the immovable property, this was also not followed. He would therefore contend that the entire gamut of Rule 8 was not observed, therefore sale was vitiated.

6.3. Learned senior counsel further submitted that Rule 9(1) mandates that no sale of immovable property at the first instance should take place before the expiry of 30 days from the date on which public notice of sale was published in the newspapers as referred to in sub rule 6 of Rule 8 or notice of sale has been served on the borrower. The statutory timeline is mandatory and requires compliance to a valid sale of secured asset. As required by sub rule 2 of Rule 9, the sale has to be confirmed on the day of conducting of sale but sale was not confirmed on the said date.

6.4. Learned senior counsel placed reliance on the decisions of Hon'ble Supreme Court in **Mathew Varghese Vs M.Amritha Kumar**¹ and decision o this Court in **Sri Sai Annadhatha Polymers and another Vs The Canara Bank, rep. by its Branch Manager, Madanapalle**².

6.5. He would submit that in W.P.No.2109 of 2020 Division Bench has not considered decision in **Mathew Varghese**. He would further contend that a coordinate bench cannot hold a decision rendered by another

¹ (2014) 5 SCC 610

² 2018 SCC OnLine Hyd 178

coordinate bench as not good law. At any rate, the decision in W.P.No.2109 o 2020 is contrary to the decision of the Hon'ble Supreme Court in **Mathew Varghese** and therefore not binding. Learned senior counsel pointed out that it is a specific assertion of respondents 1 to 3 that possession was taken on 11.4.2016, if possession was already taken on 11.4.2016, the question of taking possession second time would not arise.

7. Submissions of learned senior counsel Sri S Niranjan Reddy:

7.1. He would contend that the sale is opposed by respondents 1 to 3 on two grounds and both are not valid. First contention that there has to be two separate notices under Rule 8 (6) and Rule 9 (1) respectively and notice under Rule 9 (1) should be issued only after lapse of 30 days from the date of issuance of notice under Rule 8 (6), is on erroneous understanding of scope o these Rules. The Tribunal grossly erred in holding in that manner.

7.2. As held by Hon'ble Supreme Court in **Canara Bank Vs. M.Amarender Reddy**³ there is no requirement of maintaining 30 days after notice issued under Rule 8 (6) to conduct sale of the secured assets. It is sufficient that 30 days period is maintained from the date of issuance of notice under Rule 8 (6) and conducting of sale. This was observed before sale was conducted. As held by Division Bench of this

³ (2017) 4 SCC 735

Court in **Concern Readymix Vs Authorised Officer, Corporation Bank**⁴ the ratio laid down in **Sri Sai Annadhatha Polymers** is not a good law.

7.3. He would contend that there is no merit in the contention that sale has to be confirmed on the same day of conducting of sale. That is not the intendment o the Rules. It is also erroneous to contend that as the auction purchaser did not pay the balance sale consideration within 15 days from the date off conducting sale and extension of time to pay the balance sale consideration is illegal, merits no consideration. He would submit that there is no requirement to confirm the sale on the date of conducting of auction. Further, from the date of confirmation of sale, the successful auction purchaser can pay the balance sale consideration within 15 days, which is extendable upto 90 days. Since, power is vested in the bank to extend the time for payment of the balance sale consideration, acceptance of balance sale consideration paid by respondents 4 and 5 and confirmation of sale in favour of respondents 4 and 5 is not vitiated on the grounds urged by respondents 1 to 3.

7.4. The Tribunal grossly erred in noting that the date of confirmation of sale was 10.7.2018 and 75 % of the balance sale consideration was to be paid within 15 days from that date. He would submit that sale was confirmed on 19.07.2018 and 75 % of the balance sale consideration was paid within the time granted from the date of confirmation of sale.

⁴ 2018 SCC OnLine Hyd 783

7.5. In reply to the submissions made by learned senior counsel Sri Ashok Anand Kumar, learned senior counsel Sri S.Niranjan Reddy contended that contentions of learned senior counsel for respondents 1 to 3 are contrary to the law laid down by Hon'ble Supreme Court in **M.Amarender Reddy** (supra). That the denial of right of redemption by the borrower did not arise before confirmation of sale as the borrower never exercised the right. What was considered in **Sri Sai Annadhatha Polymers** was about redemption and since that issue does not arise for consideration in the batch of writ petitions, the question of referring it to a larger bench does not arise. As can be seen from paragraph 63 of **M/s. Aruna Web Offset Printers Vs. Andhra Bank**⁵ extension granted was not considered by this Court. Once extension was granted, if the balance amount was deposited within extended period, confirmation of sale cannot vitiate. Further, the decision of this Court in **M/s. Aruna Web Offset Printers** was stayed by Hon'ble Supreme Court.

8. Submissions of learned senior counsel Sri E.Madanmohan Rao:

8.1. Appearing for petitioner bank he would broadly concur with the submissions made by learned senior counsel Sri S Niranjan Reddy appearing for respondents 4 and 5.

8.2. According to learned senior counsel after section 13(4) possession notice was issued on 27.5.2016, the bank took symbolic possession of

⁵ WP 16870 of 2019 dt 21.4.2020 (TSHC-DB)

all the secured assets, authorized officers have served possession notice on first respondent company and also on the respondents 2 and 3 and possession notice was also affixed on all the secured assets and got published in Namaste Telangana, Telugu daily newspaper, New Indian Express, English daily newspaper, Hyderabad Edition, Andhra Jyothi, Telugu newspaper of Prakasam district edition and New Indian Express, English daily newspaper of Vijayawada edition on 1.6.2016 complying with Rule 8 (1) and 8 (2) of the Rules. He also pointed out that simultaneously O A for recovery of money was filed and the Tribunal allowed the said O.A. directing respondents 1 to 3 to pay approximately ₹.30 crores with interest @ 14.75 % from the date of filing of O.A.

9. Reply by learned senior counsel Sri S.Ashok Anand Kumar:

9.1. Replying to the contentions of both senior counsel, he reiterated that without notice of possession, possession was taken and taking over possession was vitiated on that ground. Further, taking possession and paper publication were simultaneously done, which is again illegal.

9.2. On the issue of possession notice, learned senior counsel has drawn the attention to averments made in paragraph 23 of reply affidavit filed by the petitioner bank in S.A. No. 268 of 2018. He would emphasize that these averments would clearly disclose that possession was taken only after 27.5.2016 and no possession was taken on 11.4.2016. The notices stated in paragraph 23 of the reply statement were not served on the borrowers.

10. The issue for consideration in these three writ petitions is whether the secured creditor required to maintain 30 days gap after notice issued under Rule 8 (6) before issuing notice under Rule 9 (1) of the Rules, 2002 to conduct e-auction ?

11. To appreciate this issue only three dates are required to be noticed. On 29.5.2018 notice of sale was issued under Rule 8(6) of the Rules, 2002; on the same day, auction notice under Rule 9(1) of the Rules 2002 was issued. Daily newspaper publication was made on 30.5.2018. Auction was conducted on 10.7.2018. From the date of notice under Rule 8(6) there was a gap of more than 30 days before auction was conducted. As held by the Tribunal, further 30 days gap after notice issued under Rule 8(6) is not maintained as a total period from the date of issuance of notice under Rule 8(6) and date of conducting of auction was less than 60 days.

12. It is necessary to notice the statutory scheme and the law on the subject. Section 13⁶ of the Act, 2002 and Rules 8⁷ and 9⁸ of the Rules, 2002 are relevant provisions.

⁶ **S.13.** No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

⁷ **Rule 8. Sale of immovable secured assets.—**

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:—

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

13. The scope of these provisions was considered in the following decisions:

13.1. In **Mathew Varghese**, Hon'ble Supreme Court elaborately considered scope of Section 13 of the Act, 2002 and Rules 8 and 9 of the Rules, 2002. The relevant paragraphs read as under:

“2. The interesting but very serious question that arises for consideration in this appeal is as regards the interpretation of Section 13(8) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “the 2002 Rules”).

27. A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any secured creditor may be entitled to enforce the secured asset created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act.

29.1. A plain reading of sub-section (8) would show that a borrower can tender to the secured creditor the dues together with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in the said provision, the mandate is that the secured asset should not be sold or transferred by the secured creditor. It is further reinforced to the effect that no

(c) by holding public auction; or
(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

8

Rule 9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor: Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9: Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent. of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

further step should also be taken by the secured creditor for transfer or sale of the secured asset. The contingency stipulated in the event of the tender being made by a debtor of the dues inclusive of the costs, charges, etc., would be that such tender being made before the date fixed for sale or transfer, the secured creditor should stop all further steps for effecting the sale or transfer. That apart, no further step should also be taken for transfer or sale.

29.2. When we analyse in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognised and asserted in favour of the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a constitutional right protected under Article 300-A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

29.3. Therefore, de hors the extent of borrowing made and whatever costs, charges were incurred by the secured creditor in respect of such borrowings, when it comes to the question of realising the dues by bringing the property entrusted with the secured creditor for sale to realise money advanced without approaching any court or tribunal, the secured creditor as a TRUSTEE cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFAESI Act.

29.4. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in the process of sale the secured asset derives the maximum benefit and the secured creditor or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act. More so, under Section 13(1) of the SARFAESI Act, the secured creditor is given a free hand to resort to sale of the property without approaching the court or Tribunal.

30. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale.

31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorised officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should

provide for 30 days' clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act.

33. Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1). In our considered opinion, it has got a twin objective to be achieved:

33.1. In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.

33.3. Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.

35. Therefore, a reading of Rules 8 and 9, in particular, sub-rules (1) to (4) and (6) of Rule 8 and sub-rule (1) of Rule 9 makes it clear that simply because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset in the event of the same having become a non-performing asset cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a casual manner or by not adhering to the prescriptions contained under the SARFAESI Act and the abovesaid Rules mentioned by us.

39. When we apply the above principles stated with reference to Section 60 of the TP Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above stated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

41. Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of.

53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Sections 13(1) and (8) of the said Act.”

13.2. In **Canara Bank** (supra) also Hon'ble Supreme Court elaborately considered scope of various provisions of the Act and the rules and the decision in **Mathew Varghese**. Hon'ble Supreme Court held:

“13. In the impugned judgment [*M. Amarender Reddy v. Canara Bank*, 2016 SCC OnLine Hyd 421], we find that the High Court has quoted or relied upon sub-rule (6) of Rule 8 as dealing with “movable” secured assets. This is incorrect. For, the correct version of Rule 8(6) refers to “immovable” secured assets and not movable, as noted by the High Court. Be that as it may, there is no difficulty in accepting the observation of the High Court that possession notice is distinct from the notice for sale of the secured asset. In that, possession notice is required to be given in terms of Rule 8(1) read with Rule 8(2). Whereas, a notice of intention of sale is required to be given to the borrower in terms of Rule 9(1) read with Rule 8(6) of the said Rules. This is to give intimation to the borrower about the proposed date of sale to be held after the statutory period of thirty days. Further, in case of sale of the secured assets either by inviting tenders from the public or by holding public auction being the mode permitted by sub-rule (5) of Rule 8, the secured creditor is required to give a public notice in two leading newspapers in terms of the proviso in sub-rule (6) of Rule 8. Such public notice, however, may not be necessary in case of sale of a secured asset if it is by way of the other modes specified in clause (a) or (d) of sub-rule (5) of Rule 8, to wit, by obtaining quotations from the persons dealing

with similar secured assets or otherwise interested in buying the such asset; or by private treaty.

14. The secured creditor, after it decides to proceed with the sale of secured asset consequent to taking over possession (symbolic or physical as the case may be), is no doubt required to give a notice of 30 days for sale of the immovable asset as per sub-rule (6) of Rule 8. However, there is nothing in the Rules, either express or implied, to take the view that a public notice under sub-rule (6) of Rule 8 must be issued only after the expiry of 30 days from issuance of individual notice by the authorised officer to the borrower about the intention to sell the immovable secured asset. In other words, it is permissible to simultaneously issue notice to the borrower about the intention to sell the secured assets and also to issue a public notice for sale of such secured asset by inviting tenders from the public or by holding public auction. The only restriction is to give thirty days' time gap between such notice and the date of sale of the immovable secured asset.

15. We hold that the High Court has committed a manifest error in assuming that the notice of intention of sale to be given to the borrower and a public notice for sale cannot be simultaneously issued. The High Court was also not right in observing that after a notice regarding intention to sell the secured asset under sub-rule (6) of Rule 8 is given by the authorised officer to the borrower, only on expiry of 30 days therefrom can the secured creditor take a decision about the mode of sale referred to in sub-rule (5) of Rule 8 after giving notice to the borrower and then issue a public notice after expiry of further thirty days. By this interpretation, the High Court has virtually re-written the provisions and inevitably extended the time-frame of 30 days specified in sub-rule (6) of Rule 8 (at least in relation to the sale of secured asset by inviting tenders from the public or by holding public auction).

16. To put it differently, the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding public auction, notifying the date of sale after 30 clear days from such notice. There is no need to wait for the expiry of 30 days from issuance of notice of intention to sell the secured asset given to the borrower, for publication of a public notice for sale of such asset. Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset. To the above extent, the opinion of the High Court in the impugned judgment will have to be overturned.”

13.3. In **Sri Sai Annadhatha Polymers** (supra), the sale notice dated 01.03.2018 was issued under Rule 8(6) and a notice under Rule 9 was also issued bearing the same date fixing the date of auction on 03.04.2018. Notice under Rule 9 was published in the local newspapers on 03.03.2018. Relevant paragraphs of the judgment read as under:

“15. It is true that the petitioners did not make any specific allegation in their writ affidavit in relation to violation of the mandatory provisions of the Rules of 2002 and more particularly, Rules 8(6) and 9(1) thereof in the context of the amended Section 13(8) of the SARFAESI Act. However, when a scheduled bank seeks to exercise the extraordinary and far-reaching power vesting in it under the provisions of the SARFAESI Act and the Rules framed thereunder, it must

necessarily abide by and obey the due procedure prescribed thereunder. This Court, being the sentinel on the qui vive, would be quick to react in the event a secured creditor, such as the bank, seeks to exercise such power in violation of the mandatory procedure. Be it noted that a secured creditor, by virtue of the powers created by and vesting in it under the SARFAESI Act, is empowered to dispense with the ordinary legal process of taking recourse to the competent civil Court for foreclosure and unilaterally bring the secured/mortgaged assets to sale by simply adhering to the procedure prescribed thereunder. In the event a secured creditor fails to follow such binding procedure, it would adversely impact the borrowers right to property under Article 300A of the Constitution. Therefore, notwithstanding the fact that the writ petitioners did not specifically raise a ground in this regard, this Court is entitled, nay, bound to examine as to whether the bank followed the due procedure while issuing the notices in question. Merely because sufficient pleading is not put forth is no ground for a Constitutional Court to condone or turn a blind eye to patent illegality.

20. In the light of the aforesaid changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrowers right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in *ITC LIMITED v. BLUE COAST HOTELS LIMITED* also affirmed this legal position.

21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. However, it is significant to note that Rule 8(6) of the Rules of 2002 still continues to remain the same and thereunder, the authorized officer of the secured creditor must necessarily serve upon the borrower a notice of thirty days for sale of the immovable secured asset taking recourse to one of the options available under Rule 8(5) thereof.

23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post-amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in *CANARA BANK v. M. AMARENDER REDDY*, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in *MATHEW VARGHESE*, stands extinguished upon publication of the sale notice under Rule 9(1).”

13.4. In **M/s.Aruna Web Offset Printers** (supra), on 10.05.2018 sale notice under Rule 8(6) was issued and published in daily newspaper. Later e-auction sale notice was issued on 13.05.2018 fixing the date of auction as 14.06.2018. However, against this judgment, SLP.(C).No.10518 of 2020 is filed in the Supreme Court and Hon'ble Supreme Court ordered *status quo*. The Division Bench held:

“60. In our considered opinion, as per Rule 9(2), the sale confirmation letter ought to be issued to the auction purchaser on the day of the sale itself unless the amount offered by way of sale price is less than the reserve price. On no other count can issuance of sale confirmation letter be delayed by the secured creditor to the auction purchaser.”

13.5. However, against this judgment SLP.(C).No.10518 of 2020 was filed and the Hon'ble Supreme Court ordered maintenance of *status quo*.

13.6. In **M/s Aditya Industries Vs Vijaya Bank Assets Recovery and Management Branch**⁹ decided on 8.1.2020 this issue was considered by another Division Bench of this Court. In the said case e-auction sale notice was issued on 8.6.2018. Thereafter, sale notice was issued on 11.6.2018 served on the petitioner on 13.6.2018 proposing to conduct sale on 20.7.2018. It was contended that thirty (30) days gap was not maintained between notice under Rule 8 (6) and notice under Rule 9 (1) of the Rules and the sale conducted on 20.7.2018 is vitiated on that ground. In support of the said contention, reliance was placed on the decision in **Sri Sai Annadhatha Polymers** considering the said submissions, Hon'ble Division Bench held that the decision in **Sri Sai Annadhatha Polymers** does not represent correct legal position. The

⁹ WP Nos. 25174 and 34129 of 2018 dt 8.1.2020

Division Bench held that it would suffice if there is 30 days gap from the date of publication of public notice in newspapers of sale and the date of sale. The Division Bench held:

“19. We are of the opinion that the basis for the said view of the Division Bench in that case was that Rule 8(6) of the Rules was not amended though Section 13(8) of the Act was amended. In our opinion, the unamended Section 13(8) created a right vested in the borrower to redeem all the dues at any time before the date fixed for sale or transfer. After the amendment made to Sec.13(8) on 01.09.2016, the borrower could redeem the property mortgaged to prevent its sale if he paid all the dues before the date of publication of the notice for public auction or inviting quotations.

20. Thus, the time available to a borrower to redeem the property was reduced. Rule 9(1) of the Rules was also amended. Prior to its amendment, it stated that there shall not be sale of immovable property under the Rules before the expiry of 30 days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower. But after its amendment, a proviso has been added stating that if there is any failure in conducting sale in the first attempt and it is required to conduct a sale again, the period of 30 days mentioned in sub-rule (1) of Rule 9 of the Rules would stand reduced to 15 days.

21. Merely because Rule 8(6) of the Rules, which stated that the authorized officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets under sub-rule (5), was not altered, it would not, in our opinion, make any difference.

22. In our opinion, the statute nowhere requires that there should be a 30 day gap between service of notice by the authorized officer on the borrower and the date fixed for sale of the immovable secured assets. We hold that the contrary view taken **Sri Sai Annadatha Polymers, Madanapalle, Chittoor District** does not represent the correct legal position.

23. There need not be a clear 30 day notice period between issuance of notice under Rule 8(6) and issuance of notice under Rule 9(1) of the Rules. It would suffice if there is 30 day gap from the date of publication of public notice in newspapers of sale and the date of sale.”

13.7. In **Concern Readymix v. Corporation Bank**¹⁰, Writ petitioner had taken a term loan for the establishment of Readymix concrete unit in May 2011. The account was declared as NPA on 31.10.2016 due to the default by the 1st petitioner. Sale notice under Rule 8(6) as well as under Rule 9(1) was issued on 10.07.2017. Efforts to conduct auction failed on seven times and finally on 19.01.2018 Auction proceedings were successful and the 2nd respondent became the successful bidder. The petitioners approached the DRT under section 17 challenging the auction sale notice. One of the primary contentions of the parties was

¹⁰ 2018 SCC OnLineHyd 783

that after the amendment to Section 13(8) of the SARFAESI Act, 2002, , the Authorized Officer was required to give 30 day's time from the date of issue of notice under Rule 8(6) before the issue of the sale notice under Rule 9(1), whereas the 1st respondent issued a single notice under both the rules thereby violating the mandate of law. The tribunal rejected this contention by relying on the Judgment of the Apex Court in **Canara Bank v. M. Amarender Reddy**. The Hon'ble Division Bench reviewed the pre-amended and post amendment provisions of the Act and the Rules and precedent decisions. Hon'ble Division Bench held:

“**13.** What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar³, have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.”

“**14.** Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned.”

“**15.** Keeping the above distinction in mind, if we come back to the contention with regard to the notice period of 30 days between the publication under Rule 8(6) and the sale under Rule 9(1), it may be seen that the Rules do not contemplate two different notices, one under Rule 8(6) and another under Rule 9(1). We have already extracted both the Rules. Rule 8(6) mandates - (i) the service of a notice of sale on the borrower, (ii) publication of a public notice in two leading Newspapers, of which one should be in vernacular language and (iii) affixture of the notice of sale on a conspicuous part of the immoveable property. This is in addition to

the option available to the Authorised Officer under Rule 8(7) to put the notice on the website of the secured creditor.

“16. All that Rule 9(1) says is that no sale of immovable property in the first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in the Newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower.”

“17. Rule 9(1) does not stipulate a separate notice to be published. This Rule merely makes a reference to the notice of sale served on the borrower. The words “notice of sale has been served to the borrower” appearing towards the end of the main part of sub-rule (1) of Rule 9, cannot be construed as one more notice of sale, apart from the notice of sale to be served on the borrower under Rule 8(6). If this is so construed, then the borrower should have 60 days time, with the first 30 days following the notice of sale under Rule 8(6) and the second period of 30 days following the notice under Rule 9(1). In fact, the proviso to sub-rule (1) of Rule 9 steers clear of any doubt. The proviso speaks about the failure of the first attempt of the secured creditor. Once the secured creditor fails in his first attempt, then the Authorised Officer should **“serve, affix and publish notice of sale of not less than 15 days to the borrower, for any subsequent sale”.**

“18. Therefore, the number of notices of sale required to be issued actually depend upon the number of times the property is put to sale. If Rule 9(1) is construed in such a manner as to oblige a secured creditor to issue one more notice apart from the notice under Rule 8(6), the first sale will be preceded by 2 notices and the subsequent sales will be preceded by one notice each. The correct way of looking at the rules is to say that in respect of the first auction, there has to be only one notice under Rule 8(6). But the date of the auction should fall beyond 30 days from the date of publication of sale. If no sale takes place on the first occasion, a second notice is mandated only under the proviso to sub-rule (1) of Rule 9 and this second notice shall be of a duration of 15 days. If the second attempt also fails, a third notice may be issued under the proviso to sub-rule (1) of Rule 9, of a duration of not less than 15 days for the third auction.”

“21. It may be seen from Rule 8(6) that the main part of the sub-rule speaks about service of notice of 30 days to the borrower. The proviso to sub-rule (6) of Rule 8 speaks about the publication of notices in Newspapers. Since Rule 9(1) makes a reference to the proviso to Rule 8(6), in the context of public notice and also since there is no reference to Rule 8(6) in Rule 9(1) (except with reference to the proviso) when it speaks about notice of sale served to the borrower, Courts have come to think that two notices are required to be served on the borrower, one under Rule 8(6) and another under Rule 9(1).

“22. In fact, the disjunction between - (i) a public notice of sale as referred to in the proviso to sub-rule (6) of Rule 8 and (ii) a notice of sale served to the borrower, maintained in Rule 9(1) by the use of the word “or”, was explained in Mathew Varghese by the Supreme Court. In paragraph-31 of the report, the Supreme Court held in Mathew Varghese that this disjunction should be read as a conjunction. The Court said that the word “or” should be read as “and”.”

“23. The moment the word “or” appearing in Rule 9(1) is read as “and”, there is no scope for concluding that Rule 9(1) requires one more notice to be served to the borrower, in addition to the notice served to the borrower under Rule 8(6).”

14. In the peculiar facts of that case, Hon’ble Division Bench upheld the decision of the DRT. The Hon’ble Division Bench was not informed of the decision of another Division Bench in **M/s. Aditya Industries** (supra) wherein the Division Bench held that decision in **Sri Sai Annadhatha Polymers** is not good law. In

Concern Readymix, learned Division Bench vividly elucidated the interplay of the provisions in the Act and the Rules. We are in respectful agreement with enunciation of law in **M/s.Aditya Industries** and **Concern Readymix**.

15. The issue of right of redemption was considered in **Amme Srisailam vs. Union Bank of India and others** (W.P.No.11435 of 2021, dated 17.08.2022). While considering the issue learned Division Bench looked into the decision in **Concern Readymix**. The Division Bench said:

“38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:

The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.

39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.

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46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in **Concern Readymix** (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor.”

16. It is thus beyond pale of doubt that it is sufficient that 30 days notice is issued before sale of secured asset is conducted and notices under Rule 8(6) and Rule 9(1) can be issued simultaneously. In other words, it is not necessary that there must be a 30 days gap after notice under Rule 8(6) is issued and before notice under Rule 9(1) is issued. As held in **Amme Srisailam** (supra) right of redemption of mortgagor under Section 60 of Transfer of Property Act is preserved till sale certificate is registered and said right is not extinguished by amendment of Section 13(8) of the Act.

17. The Debts Recovery Tribunal grossly erred in holding that further 30 days gap has to be maintained after notice under Rule 8(6) was issued and setting aside the sale of secured asset.

18. The order of Debts Recovery Tribunal is liable to be set aside. It is accordingly set aside. Writ Petition Nos.2109 of 2020 and 2276 of 2020 are allowed. Writ Petition No.2751 of 2020 is dismissed. Pending Miscellaneous Applications if any shall stand closed.

P.NAVEEN RAO, J

J.SREENIVAS RAO, J

Date: 10.02.2023
twk/KKM

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J.SREENIVAS RAO**

WRIT PETITION Nos.2109, 2276 & 2751 OF 2020

Date: 10.02.2023

Tvk/kkm