

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

W.P.NO.14530 OF 2025

Mr. Avinash Desai, learned Senior Counsel representing Ms. Zainab Khan, learned counsel for the petitioner.

Mr. K. Arvind Kumar, learned counsel for the respondent No.1.

Mr. V. Sethu Madhava Rao, learned counsel representing Ms. V. Dyumani, learned counsel for the respondent No.2.

Mr. K. Krishna Shrawan, learned counsel for the respondent No.3.

ORDER: (*Per The Hon'ble Justice Moushumi Bhattacharya*)

1. The petitioner seeks setting aside of a letter dated 13.06.2023 issued by the respondent No.2/Union Bank of India forfeiting Rs.2,16,25,000/- deposited by the petitioner towards 25% of the sale consideration pursuant to an e-auction conducted on 14.03.2023. The petitioner seeks a consequential direction on the respondent No.2/Bank to receive the balance 75% of the sale consideration of Rs.6,48,75,000/- and execute a registered Sale Certificate in favour of the petitioner in respect of the subject property or in the alternative, a direction on the respondent No.2/Bank to refund the amount of Rs.2,16,25,000/-.

2. The petitioner before this Court is the Auction Purchaser who was declared the highest bidder (H1 bidder) in the e-auction

conducted by the respondent No.2/Bank for a sale price of Rs.8,65,00,000/-.

3. The brief facts leading to filing of the present Writ Petition are as follows.

4. The respondent No.2/Bank issued an e-auction Sale Notice on 05.12.2022 and 04.02.2023 fixing the date of the auction on 23.02.2023. The respondent No.3/Guarantor filed S.A.No.58 of 2023 before the Debts Recovery Tribunal-I, at Hyderabad('DRT') challenged the e-auction sale Notice dated 05.12.2022 where the DRT passed a docket order dated 17.02.2025 granting a conditional stay of confirmation of sale directing the Bank to proceed with the auction but not to confirm the sale in favour of the highest bidder in pursuance to e-auction sale notice dated 05.12.2022. However, the auction scheduled on 23.02.2023 did not materialize. On 24.02.2023, the Bank invoked the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') by issuing a fresh e-auction sale Notice fixing the date of auction on 14.03.2023. The writ petitioner participated in the auction and his offer of Rs.8,65,00,000/- for purchase of subject property was declared a highest bid and accordingly the petitioner a H1 bidder by an email dated 14.03.2023 which also mentioned that sale is subject to outcome of pending SA

before the DRT. The Bank again informed the petitioner by a letter dated 15.03.2023 that the petitioner's offer was accepted and sale is confirmed but the sale is subject to the outcome of S.A.No.58 of 2023 pending before the DRT and also the petitioner making the balance 75% payment of the bid amount within 15 days i.e., on or before 29.03.2023 or else the 25% amount paid by the petitioner i.e., Rs.2,16,25,000/- shall be forfeited and Bank will proceed further for auction without further notice to petitioner.

5. The petitioner deposited an amount of Rs.2,16,25,000/- on 15.03.2023 towards 25% of the sale consideration including the earnest money deposit. The Guarantor filed W.P.No.7533 of 2023 on 16.03.2023 challenging the e-auction sale Notice dated 24.02.2023. By a Co-ordinate Bench order of this Court, the Bank was directed not to confirm the sale in favour of the auction purchaser until further orders of the DRT. The said Writ Petition was disposed of on 20.03.2023 by granting liberty to the respondent No.3/Guarantor to pursue the pending S.A.No.58 of 2023 before the DRT. The Court also made it clear that they have not expressed any opinion on the conditional order passed by the DRT.

6. On 31.03.2023, the respondent No.3/Guarantor sought extension of time to pay the balance amount of which Rs.1 crore towards 2nd instalment which was to be deposited as per the orders

passed by the DRT in I.A.No.303 of 2023 in S.A.No.58 of 2023 on 17.02.2023. On 21.04.2023 through an e-mail, the Bank informed the petitioner that the Guarantor was granted extension of the time till 15.04.2023 by the Tribunal for payment of the second instalment *vide* order dated 31.03.2023 and the said order was not in Bank's knowledge and the Guarantor has complied with the said order by depositing the Demand Draft for Rs.1 crore on 12.04.2023. The writ petitioner addressed a letter to the Bank on 28.03.2023 through an email to update the petitioner about the transfer of property and requested the Bank to refund a part of the amount or total amount paid. The petitioner assured to re-deposit the amount when the Bank is entitled to transfer the property on his name.

7. The petitioner further requested the Bank to extend the time for at least 15 days for depositing the balance amount in case the legal issues are sorted and the Bank had right to transfer and register property in his name. In the letter, on 18.04.2023 the Bank considered the request and extended the time till 28.04.2023. On 31.05.2023, the respondent No.2/Bank sent an e-mail to the petitioner to pay the balance 75% of the sale consideration immediately failing which the 25% of the sale consideration deposited by the petitioner would be forfeited, Bank is at liberty to conduct the auction for subject property afresh. The Bank issued a letter to the petitioner on 13.06.2023 that he failed to pay sale

consideration in time hence Bank was forfeiting the 25% of the sale consideration. The present Writ Petition was filed on 01.05.2025 challenging the letter dated 13.06.2023.

8. Learned Senior Counsel appearing for the petitioner/auction purchaser submits that the respondent No.2/Bank failed to act in a *bona fide* manner it was incumbent on the respondent No.2/Bank to inform the fact of any pending litigation of the secured asset to the petitioner. Counsel submits that the sale notice dated 24.02.2023 failed to disclose the pendency of S.A.No.58 of 2023 filed by the Guarantor before the DRT as well as the conditional stay obtained by the Guarantor on 17.02.2023. Counsel relied on the order passed by a Co-ordinate Bench of this Court on 20.03.2023 in W.P.No.7533 of 2023 filed by the Guarantor whereby the Bank was directed not to proceed in terms of confirming the sale in favour of the successful auction purchaser until further orders passed by the DRT.

9. Learned counsel appearing for the respondent No.2/Bank urges that the Writ Petition is devoid of merit as there was no stay in respect of the impugned auction proceedings. It is further submitted that the action of the Bank in forfeiting the 25% of the sale consideration was within the statutory powers under Rule 9(5) of The Security Interest (Enforcement) Rules, 2002. It is submitted that the

petitioner has an alternative remedy under the provisions of the SARFAESI Act.

10. Learned counsel appearing for the respondent No.3/Guarantor submits that the petition is not maintainable since there are several disputed facts raised by the petitioner which cannot be gone into by a Writ Court. Counsel appearing for the respondent No.3/Guarantor submits that the petitioner/Auction Purchaser was well aware of the pending proceedings before the DRT of but nonetheless took a chance in filing the Writ Petition. Counsel relies on the caveat communicated by the Bank stating that the auction would be subjected to the outcome of the S.A. which is pending before the DRT.

11. We have heard learned Senior Counsel/counsel appearing for the parties and have considered the material placed before us.

12. The basic premise on which the petitioner has approached this Court is whether the respondent No.2-Bank compelled the petitioner to deposit part-consideration of the secured asset on incomplete information, that is, by failing to disclose the pending proceedings in relation thereto. While the petitioner reiterates that the petitioner was kept in the dark, the stand of the respondent No.2-Bank as well as the respondent No.3/guarantor is that the petitioner was aware of the relevant particulars with regard to the secured asset despite

which the petitioner chose to deposit 25% of the sale price at his own risk and consequence.

13. The following timeline would be relevant for deciding whether the petitioner is entitled to a direction on the Bank to accept the balance sale consideration or alternatively, refund the forfeited 25% that was already paid to the Bank by the petitioner.

14. On 14.03.2023, the Bank sent an e-mail to the petitioner stating that the petitioner has been declared the H1 (highest) bidder of the subject property while mentioning that *'the sale is subject to outcome of S.A.No.58 of 2023 pending before the Debts Recovery Tribunal-1, Hyderabad'*. On the following day, i.e., 15.03.2023, the Bank again wrote to the petitioner through a letter stating that the petitioner's offer of Rs.8,65,00,000/- for purchase of the subject property/asset mentioned during the e-auction held on 14.03.2023 was accepted and the sale was confirmed subject to certain terms and conditions. The third condition of said letter mentions that the petitioner had already *'remitted EMD for Rs.85,00,000/- through MSTC website and deposited an amount of Rs.1,31,25,000/- through RTGS on 24.02.2023 towards 25% of the sale consideration which came to Rs.2,16,25,000/-'*. The seventh condition in the said letter mentions that *'the sale shall be subject to outcome of S.A.No.58 of 2023 pending before the DRT-I, Hyderabad'*.

15. On 16.03.2023, a Co-ordinate Bench order of this Court in a Writ Petition (W.P.No.7533 of 2023) filed by the Guarantor directed the Bank not to take further proceedings pursuant to the e-auction conducted on 14.03.2023. It may be recalled that the petitioner was declared as the H1 bidder (highest bidder) in the very same auction. The Writ Petition was disposed of by an order dated 20.03.2023 granting liberty to the petitioner therein/guarantor herein to pursue the pending S.A.No.58 of 2023 in the DRT and reiterated the direction on the respondent No.2-Bank not to confirm the sale in favour of the auction purchaser in the auction conducted on 14.03.2023.

16. The petitioner wrote to the Bank on 28.03.2023 stating that the petitioner was advised to make the balance payment of Rs.6,48,75,000/- on or before 29.03.2023 but that the petitioner came to know through the tenants of the subject property that the owner of the subject property had obtained a Court order in W.P.No.7533 of 2023 on 20.03.2023 prohibiting the Bank from transferring the property in the petitioner's name. The petitioner accordingly requested the Bank to keep the petitioner posted with regard to the developments in relation to the property and also requested to refund a part of the amount or total amount already paid by the petitioner in the event if transfer of property takes time.

The petitioner also requested 15 days time to deposit the balance amount in case the legal issues were resolved.

17. The above dates make it clear that the petitioner was informed of the S.A. filed by the guarantor before the DRT by the Bank while informing the petitioner that the petitioner had been declared as the H1 bidder in the auction. The fact of the pending S.A. was also mentioned by the Bank before the petitioner deposited 25% of the sale price in relation to the subject property. Therefore, the petitioner cannot claim ignorance of the DRT proceedings after 14.03.2023 i.e., before the petitioner was called upon to deposit 25% of the sale consideration amount.

18. However, the crucial point is whether the knowledge of the pending S.A. filed by the respondent No.3/guarantor of the subject property as on the date of the petitioner being called upon to deposit 25% of the sale price, would amount to sufficient disclosure by the Bank for enforcing its rights under Rule 9 of The Security Interest (Enforcement) Rules, 2002('the 2002 Rules').

19. We are constrained to disagree with the contention of the Bank by the reason of the subsequent events which are as follows:

- (i) The Writ Petition filed by the guarantor
i.e.W.P.No.7533 of 2023 on 16.03.2023 and

- (ii) The two orders passed by a Co-ordinate Bench dated 16.03.2023 and 20.03.2023, respectively.

20. The above Writ Petition was filed by the respondent No.3/guarantor for setting aside the sale Notice dated 24.02.2023 and the e-auction dated 14.03.2023 along with all further proceedings pursuant to them along with a direction on Bank not to conduct any further proceeding with respect to subject property until final disposal of S.A. The prayer in I.A.No.2 of 2023 is for a direction on the Bank not to confirm the sale or issue a registered sale certificate pursuant to the e-auction held on 14.03.2023 with respect to the subject property. The prayer in I.A. No.1 of 2023 was for the Bank not to take any further action under SARFAESI Act pending disposal of W.P.No.7533 of 2023. On 16.03.2023, the Co-ordinate Bench directed the Bank not to take further proceedings pursuant to the auction conducted on 14.03.2023. The Writ Petition was disposed of on 20.03.2023 upon Co-ordinate Bench noting several facts which would be relevant for the present proceedings:

- (i) The Court did not appreciate the stand of the Bank.

(ii) The respondent No.3/guarantor sought for a comprehensive relief before the DRT in S.A.No.58 of 2023 challenging not only the e-auction notice of 05.12.2022, sale notice dated 04.02.2023 but also the physical possession of the property and notice issued by the Advocate-Commissioner along with all further proceedings initiated by the Bank in respect of the subject property.

(iii) The DRT passed an interlocutory order staying further proceedings except conducting auction subject to the petitioner therein/guarantor herein depositing the amount as directed by the DRT. As directed, the petitioner therein/guarantor herein deposited Rs.1 crore on 10.03.2023 and the Bank realized this amount.

(iv) Hence, the Bank could not have gone for a fresh auction (the auction conducted on 14.03.2023 whereby the petitioner in the present Writ Petition was declared as the highest bidder).

21. The Co-ordinate Bench accordingly disposed of the Writ Petition reiterating their restraint on the Bank to stay all further proceedings by not permitting the Bank to confirm sale at such a stage and not to confirm the sale in favour of the auction purchaser

in the auction conducted on 14.03.2023. The auction purchaser is the petitioner in the present Writ Petition.

22. Therefore, on and from 20.03.2023, the respondent-Bank was under a restraint order passed by the High Court with regard to confirming the sale in favour of the petitioner in the present proceedings. Admittedly, the respondent-Bank did not bring this fact to the notice of the petitioner by way of a written communication. We have not been shown any letter or e-mail reflecting any communication from the Bank to the petitioner with regard to the order passed by the High Court on 20.03.2023. The only communication by the respondent-Bank which has been placed are of 18.04.2023, 21.04.2023, 31.05.2023 and 13.06.2023 whereby it is clear that the Bank extended the time by one month i.e., from 28.03.2023 to 28.04.2023 for payment of the balance 75% of the sale price.

23. The failure on the part of the Bank to make full disclosure of the Court order to the petitioner assumes importance since the Bank proceeded to demand the balance 75% consideration price from the petitioner despite its obligation to keep the petitioner informed of the restraint order. In fact, the petitioner's letter to the Bank on 28.03.2023 informing the latter of the Court order in W.P.No.7533 of 2023 did not elicit an unequivocal reply from the Bank in terms of

the restraint. This is of utmost importance since the Co-ordinate Bench in Para 10 by the order dated 20.03.2023 clearly directed that

“the respondent-Bank shall not confirm the sale in favour of the auction purchaser in the auction conducted on 14.03.2023...”

24. It was hence the bounden duty of the Bank to come clean (to the petitioner) in respect of the very same property for which the petitioner had already parted with 25% of the sale price.

25. The argument made on behalf of the Bank with regard to the DRT proceedings being in relation to the previous e-auction notices dated 05.12.2022 and 04.02.2023, as opposed to the later e-auction notice dated 24.02.2023, is of no consequence since the later notice resulted in the auction of 14.03.2023 declaring the petitioner as the (highest bidder) H1 bidder was in respect of the subject property. Consequentially, the contention that the Bank insisted upon the balance 75% by reason of the auction being free of any Court orders is completely misplaced and incorrect. The order of the Co-ordinate Bench dated 20.03.2023 clearly mentions the auction dated 14.03.2023 and the prohibition on the Bank to confirm the sale in favour of the auction purchaser, who is the writ petitioner in the instant case.

26. The stand of the Bank would show that the Bank sought to enrich itself both from the petitioner as well as the guarantor. While insisting upon the balance sale price from the petitioner/auction purchaser, the Bank also participated in the DRT proceedings where the guarantor was directed to make payments to the Bank for stay of the auction. This duality reeks of unjust enrichment at the expense of the petitioner/auction purchaser being kept in the dark at the relevant point of time. The conduct of the Bank was highlighted by the Co-ordinate Bench in the order dated 20.03.2023 to the extent of the Bank calling for the second e-auction when the guarantor had already challenged the e-auction Notice with regard to the first auction.

27. We thus deprecate the conduct of the Bank - not only for the unjust enrichment - but also for the lack of probity and transparency on its part in failing to make full disclosure of the material facts to the petitioner particularly Court orders passed in W.P.No.7533 of 2023.

28. The Security Interest (Enforcement) Rules, 2002 were framed for the purpose of providing for specific procedures and timelines for enforcement of security interest as outlined in The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act, 2002'). Rule 9 (1) requires notice

of the sale of immovable property to be given to the borrower within specified timeframes after public notice of such sale. Rule 9(2) provides for confirmation of sale of the immovable property in favour of the highest bidder subject to confirmation by the secured creditor and subject to the amount offered in relation to the reserve price. The Rule further provides that the Authorised Officer can proceed with the sale when the highest bid is below the reserved price subject to the written consent of both the borrower as well as the secured creditor.

29. Rules 9(3) and 9(4) deal with the payment process to be followed by the purchaser. Rule 9(3) provides that upon the confirmation of the sale, the successful purchaser must immediately make a deposit of 25% of the sale price inclusive of the earnest money deposited, if any, to the Authorized Officer. Rule 9(4) stipulates that the balance amount shall be paid to the authorized officer on or before the 15th day of confirmation of sale or within such extended period as may be agreed between the purchaser and the secured creditor in writing, but not beyond three months.

30. Rule 9(5) provides that in case of default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited by the secured creditor and the property shall be resold. The defaulting purchaser shall also forfeit all claims to the property or to any part of

the sum for which it may be subsequently sold. Rule 9(6) requires issue of a certificate of sale of the immovable property in favour of the purchaser in the statutory format on confirmation of sale and on full payment being made for the sale.

31. The sequence of the sub-rules under Rule 9 of the 2002 Rules proceeds on the basis of a clean sale by the secured creditor in favour of a purchaser pursuant to an e-auction. Rule 9 presumes unimpeachable conduct on the part of the secured creditor which would include full disclosure to the purchaser/highest bidder. In other words, Rule 9 only takes into account compliance in terms of making payment by the purchaser for the secured asset within the required time frames. Therefore, Rule 9 envisages a perfect factual state of affairs and not a situation where the secured creditor is itself at fault for not making the required disclosure to the purchaser of any pending Court orders. Hence, once the secured creditor/Bank falters on its obligation of full disclosure, it cannot use Rule 9(5) as a shield for payment of the balance 75% of the sale price, against the purchaser.

32. The facts of the present case indicate that the Bank was under an unequivocal restraint from confirming the sale in favour of the writ petitioner/auction purchaser. Thus, the Bank's reliance on the statutory rigour of Rule 9(5) is completely undermined by its own

conduct. We are hence of the view that Rule 9(5) of the 2002 Rules would not come to the aid of the Bank.

33. We also cannot accept the Bank's contention that the petitioner has an alternative efficacious remedy under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is well settled that a party can approach the Writ Court on certain exceptions including breach of the principles of natural justice. In the present case, the petitioner being kept in the dark of the orders passed by the High Court would amount to such an exception since any act of deliberate non-disclosure would deprive the other party to effectively deal with the information suppressed. Hence, the Writ Petition is maintainable.

34. However, since the petitioner was made aware of the pending S.A. in DRT-I even before deposit of 25% of the sale price, the petitioner is disentitled from compelling the Bank to receive the balance 75% of the consideration price.

35. The cases cited on behalf of the parties should be placed in the context of the above discussion.

36. *Mohd. Shariq v. Punjab National Bank and others*¹, dealt with a situation similar to the present case where the Supreme Court noted that the highest bidder/appellant before the Supreme Court had come with a *bona fide* defense and that he was not informed of substantive proceedings pending before the DRT instituted at the instance of the borrower on the date of the auction being held or day thereafter. The Supreme Court accordingly directed the respondent-Bank to return the amount of Rs.50.25 lakhs to the appellant deposited with reference to the auction notice within a period of two months failing which it carries a 12% interest per annum until the date of it being made over to the appellant.

37. In *Mr. Mandava Krishna Chaitanya v. Uco Bank, Asset Management Branch*², the High Court noted the duty cast upon the secured creditor to undertake due diligence at least at the stage of putting the secured asset to sale, so that the bidders in the auction can be assured that the Bank has taken necessary measures in this regard and participate in the auction sale. A similar situation also arose in *Lincoln Education Academy v. Union Bank of India*³, where a Single Bench of the Calcutta High Court appreciated the predicament of the petitioner/auction purchaser in having to put in 25% towards sale price where the property was mired in litigation. The Court also

¹(2023) 16 SCC 341

²(2018) 3 ALD 266 (DB)

³2023 SCC OnLine Cal 2338

mentioned that the reluctance of the petitioner to pay balance 75% and instead wanting 25% back was understandable.

38. *Authorised Officer, State Bank of India v. C. Natarajan*⁴, cited on behalf of the guarantor, is distinguishable on facts. In that case, the auction purchaser's first request for extension of time to put in the balance amount was granted by the secured creditor. However, before expiry of the extended period for payment, the auction purchaser again requested time citing pendency of proceedings at the instance of borrower before the DRT. The request was rejected by the Bank in view of there not being any order of stay. The order of forfeiture was passed by the Authorised Officer in terms of Rule 9(5) of the 2002 Rules since the auction purchaser failed to deposit the amount and the time extended through mutual agreement elapsed. In any event, the Supreme Court agreed with the applicability of Rule 9(5) of the 2002 Rules on the justification that the purpose of the Rule was to instill a sense of discipline in the intending purchaser who participates in the auction-sale process and also to avoid deceptive manipulation of prices at the instance of unscrupulous borrowers.

⁴(2024) 2 SCC 637

39. *Agarwal Tracom Pvt. Ltd. V. Punjab National Bank* ⁵ was concerned with the issue as to whether a secured creditor can forfeit the deposit made by the auction purchaser as a part of the measures initiated under section 13(4) of the SARFAESI Act. The Supreme Court stated that the action of the secured creditor in forfeiting the deposit made by the auction purchaser is part of measures taken by a secured creditor under section 13(4) of the SARFAESI Act.

40. As stated above, the cases cited on behalf of the parties must be placed within the factual conspectus of the present writ petition where the petitioner/auction purchaser was admittedly not informed of the orders passed by the High Court on 16.03.2023 and 20.03.2023. In this regard, the respondent-Bank does not have any explanation to offer in its defense. The Bank certainly cannot reap a double benefit from the guarantor as well as the auction purchaser by keeping the latter uninformed and ignorant of the subsequent developments in the subject property.

41. We hence deem it fit to allow the Writ Petition to the extent of directing the Bank to refund/return Rs.2,16,25,000/- deposited by the petitioner towards 25% of the sale consideration pursuant to the e-auction conducted on 14.03.2023. The proceedings initiated by the respondent No.3/guarantor before the DRT and thereafter in the

⁵(2018) 1 SCC 626

High Court are sufficient grounds for disallowing the primary relief sought by the petitioner i.e., for directing the Bank to receive the balance 75% of the sale consideration or to execute a registered sale certificate in favour of the petitioner in respect of the property.

42. W.P.No.14530 of 2025, along with all connected applications, is thus disposed of in terms of the above.

43. The respondent No.2-Bank shall return the amount to the petitioner within four weeks from the date of this order.

Interim orders, if any, shall stand vacated.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

14th October, 2025.

BMS/NDS