



THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 13 of 2020

Smt. Meena Jha,
Aged about 54 years,
W/o Mr. Kashi Kant Jha,
R/o Daragaon, Tadong,
Gangtok, East Sikkim-737102.

..... **Petitioner**

Versus

1. State Bank of India,
A body corporate constituted
under the State Bank of India
Act, 1955; having its central office
at Madame Cama Road,
Mumbai-400021, represented by its CEO.
2. The Chief Manager-cum-Branch Manager,
State Bank of India,
Gangtok (Main) Branch, M.G. Marg,
Gangtok, East Sikkim.
3. The Recovery Officer-I,
Debts Recovery Tribunal,
Guwahati, 1st Floor, Apsara
Building Dr. B. Baruah Road, Guwahati 781007,
Kamrup, Assam.
4. Shri Akhileshwar Prasad @
Akleswar Prasad,
C/o M/s Akhilesh Enterprise,
Son of Late Ramnath Prasad,
R/o Daragaon, Tadong,
P.O. Tadong, Gangtok,
East Sikkim-737102.
5. Laxmi Devi,
W/o Shri Akhileshwar Prasad @
Akleswar Prasad,



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C/o M/s Akhilesh Enterprise,
R/o Daragaon, Tadong,
P.O. Tadong, Gangtok,
East Sikkim-737102.

6. The District Collector,
Registrar of Land, District Collectorate,
Sichey, P.O. Sichey, Gangtok.
East Sikkim.
7. State of Sikkim,
Represented by and through
The Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

..... **Respondents**

Application under Articles 226, 227 of the Constitution of
India.

Appearance:

Mr. Abhinav Kant Jha, Ms. Preeti Basnett, Mr. Anish
Byahut and Ms. Punam Rai, Advocates for the
Petitioner.

Mr. J. K. Chandak, Advocate for Respondent Nos.1 and
2.
None for Respondent Nos. 3 to 5.

Mr. Thinlay Dorjee Bhutia, Government Advocate for
Respondent Nos. 6 and 7.

Date of Hearing : 03.07.2025
Date of Judgment : 14.08.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

The moot question

1. The question that falls for determination is whether the
writ petition filed in the year 2020 by the auction purchaser



who had participated in an auction sale of the immovable property of the secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) in the year 2011 but failed to pay the deposit of 25% of the sale price as required under Rule 9(3) or pay the balance within the time frame under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 (the SI Rules), should be allowed?

The parties

2. Meena Jha (the petitioner) was the auction purchaser who has sought to invoke the writ jurisdiction of this Court against the State Bank of India (respondent no.1) the secured creditor, its Chief Manager-cum-Branch Manager (respondent no.2), the Recovery Officer-I, Debts Recovery Tribunal (respondent no.3), Akhileshwar Prasad (respondent no.4)-the borrower, his wife Laxmi Devi (respondent no.5), the District Collector (respondent no.6) and the State of Sikkim (respondent no.7).

Facts

3. Before this Court examines the legal issues arising in the present writ petition it would be important to set out the relevant sequence of events:

(i) On 26.11.2007 the respondent no.4 was sanctioned a housing loan by the respondent no.1. The property was mortgaged with the respondent no.1. The property was in fact a leasehold property owned by one Shirshak Gurung. The lease deed dated 29.03.2008 granted lease of the property to the respondent no.4 as the lessee. The lease deed permitted mortgage of the property and allowed the respondent no.4 to avail loan from any bank/financial institution on the condition that the respondent no.4 shall repay such loan. It further permitted the respondent no.4 to transfer/mortgage the property i.e. the land and the building constructed thereon. The lease deed specifically provided that if the respondent no.4 failed to repay the loan with interest the same could be recovered by disposal of the property and in such an event even the lessor shall not raise any objection at all.

(ii) The respondent no.4 failed to repay the loan and the respondent no.1 initiated recovery measures under the SARFAESI Act. O.A. No.144 of 2010 was filed by the respondent no.1 against the respondent no.4 and others before the Debts Recovery Tribunal.

(iii) The petitioner participated in the auction sale conducted by the respondent no.1 for sale of the property

of the respondent no.4 vide notice published on 09.09.2011. The petitioner was declared the successful bidder in the auction which was held on 13.10.2011.

(iv) The petitioner deposited the earnest amount of Rs.6,50,000/- vide bank draft No.701975 dated 11.10.2011 which was not encashed.

(v) However, admittedly the petitioner did not pay the deposit of 25% of the amount of sale price immediately as required by Rule 9(3) of the SI Rules. The balance amount of sale price payable which was to be paid on or before the 15th day of confirmation of the sale of the property was also not paid. Instead on 24.10.2011 the petitioner addressed a letter to the Assistant General Manager of respondent no.1 seeking further time of one month to deposit the remaining money. According to the respondent no.1 time was not granted. On this letter there is a hand written endorsement showing receipt of Rs.3,60,000/- dated 24.11.2011. It is through this endorsement that the petitioner claims of having made part payment of the amount. The respondent no.2 contends in his reply dated 14.06.2025 to the additional affidavit of the petitioner that this amount of Rs.3,60,000/- has not been received by them.



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(vi) The petitioner also did not pay the balance amount within the period of one month sought for by him vide letter dated 24.10.2011.

(vii) Admittedly, the petitioner did not have the necessary financial resources to pay the sale price amount and therefore she sought a loan of Rs.50,00,000/- from the respondent no.1. Although the respondent no.1 sanctioned this amount on 15.12.2011 the loan was not disbursed. The security for the sanctioned loan to the petitioner was the same property. According to the respondent no.1 the petitioner failed to fulfil the obligations of execution of loan documents and to furnish immovable property as security and therefore, did not disburse the loan.

(viii) On 26.07.2012 the Chief Manager (the respondent no.2) of the respondent no.1 issued a letter to the respondent no.6 requesting for registration of the property in the name of the petitioner.


(ix) On 17.08.2012 the Sub-Divisional Magistrate sent a letter to the respondent no.2 in response to his communication dated 26.07.2012 stating that on examination of the documents it was seen that the



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petitioner was not in possession of Sikkim Subject Certificate or Certificate of Identification and as per the old laws of Sikkim she was not entitled to purchase the said property. In view of the contradictory position of laws vis-a-vis section 13(6) of the SARFAESI Act and the old laws of Sikkim the case was forwarded to the Land Revenue and Disaster Management Department for seeking legal opinion from the Law Department and it was stated that after receipt thereof appropriate action would be taken.

(x) On 16.01.2013 the respondent no.2 issued a letter to the respondent no.6 stating that they are in possession of the property which is occupied by two tenants who are denying ownership and disturbing their possession. It was also informed that the property is also occupied by the petitioner who had purchased the property under SARFAESI Act through auction held on 13.10.2011, registration of which is in process in the office of the respondent no.6. It was stated that the tenants were creating disturbance to the petitioner who are frequently reporting it to them. The respondent no.2 therefore requested the respondent no.6 to issue eviction notice to the tenants.



(xi) On 18.01.2013 the Manager of respondent no.1 wrote to the petitioner stating that the issue of transfer of ownership of the property is under consideration with the registering authority and on completion of the formality she would be called for completing the remaining formalities after which they would provide her with peaceful possession free from all encumbrances.

(xii) On 10.09.2013 the Sub-Registrar addressed a communication to the respondent no.2 stating that the file pertaining to the sale deed was misplaced and therefore, fresh sale deed duly filled was to be submitted.

(xiii) On 19.09.2013 the respondent no.2 forwarded the duly filled sale deed for necessary action to the Sub-Registrar. The sale deed was dated 19.09.2013 in favour of the petitioner.

(xiv) It is unclear from the pleadings as to when the respondent no.1 approached the Debts Recovery Tribunal once again. However, it is noted that Recovery Certificate No.1249 of 27.01.2014 was issued by the learned Presiding Officer of the Debts Recovery Tribunal in Case No.O.A.144 of 2010 in the matter of State Bank of India, Gangtok Branch vs. Shri Akleswar Prasad & Ors. This



indicates that the respondent no.1 may have re-approached the Debts Recovery Tribunal sometime in the year 2014 pursuant to which the Recovery Certificate dated 27.01.2014 was issued.

(xv) On 08.02.2015 the Sub-Registrar wrote to the respondent no.2 stating that the Law Department has categorically pointed out that registration of sale deed of the property cannot be permitted in favour of the petitioner as she did not have a Certificate of Identification.

(xvi) On 28.05.2016 the Land Revenue and Disaster Management Department wrote to the Manager of respondent no.1 stating that the issue of registration of the property is under its consideration.

(xvii) On 20.07.2016 the Debts Recovery Tribunal issued an order of attachment prohibiting respondent no.4 and his wife-respondent no.5 from transferring or changing the property in any way and further prohibiting all other persons from taking any benefit under such transfer or charge.

(xviii) On 14.09.2016 the respondent no.2 wrote to the respondent no.6 stating that they were treating the



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auction dated 13.10.2011 as failed and requesting him not to proceed further in future in the matter of transfer of the property in the name of the petitioner.

(xix) On the same day i.e. 14.09.2016 the respondent no.2 issued a letter to the petitioner referring to its communication dated 14.09.2016 to the respondent no.6 and returning the demand draft No.701975 dated 11.10.2011 for Rs.6,50,000/-.

(xx) On 10.10.2016 the petitioner wrote to the respondent no.2 protesting the return of the earnest money and for various other acts of the respondent no.1.

(xxi) The matter was thereafter placed before the Cabinet vide Cabinet Memorandum dated 14.11.2016. It was recorded in the draft of the Cabinet Meeting that the Cabinet meeting held on 11.11.2016 however, deferred the proposal of registration of the property in favour of the petitioner.

(xxii) On 29.12.2016 the Debts Recovery Tribunal issued sale notice of the property by e-auction and scheduled the date as 10.03.2017 for the said purpose. The last date of registration of bidders was on or before 03.03.2017.

(xxiii) The petitioner thereafter, approached the Guwahati High Court by filing Writ Petition (C) No.807 of 2017 (the writ petition) with prayers to set aside the attachment order dated 20.07.2016, notice of attachment dated 13.08.2016 and sale notice dated 29.12.2016 issued by the respondent no.3 in connection with D.R.P.C. No.1249 dated 27.01.2014 arising out of O.A. No.144 of 2010.

(xxiv) It transpires that on 10.02.2017 the Division Bench of the Guwahati High Court took up the writ petition. The learned counsel for the petitioner submitted that the petitioner was willing to deposit the entire amount with interest outstanding against her with the respondent no.1 within two weeks. As such, notice was issued to the respondents and it was made clear that if the petitioner intends to deposit the entire amount with interest due against her, the respondent no.1 will be at liberty to accept the same. The Division Bench also directed that the re-auction of the property shall remain stayed.

(xxv) From the affidavit dated 03.03.2017 filed by the petitioner before the Guwahati High Court it seems that thereafter the petitioner on 21.02.2017 approached the respondent no.1 along with two drafts bearing No.256189

dated 20.02.2017 and No.701975 dated 11.10.2011 both drawn on the State Bank of India for an amount of Rs.58,69,005/- and Rs.6,50,000/- towards deposit of the total amount of Rs.65,19,005/- vide letter dated 21.02.2017 which however, was not accepted by the respondent no.1 taking the option granted by the Guwahati High Court.

(xxvi) On 22.05.2017 the Guwahati High Court dismissed the writ petition as withdrawn with liberty to the petitioner to file a fresh petition before this Court. Pursuant to this liberty the petitioner approached this Court by filing Writ Petition (C) No 39 of 2017 which was also withdrawn and thereafter the present writ petition was filed on 06.06.2020.

(xxvii) On 29.04.2023 the Sub-Divisional Magistrate wrote to the respondent no.2 in response to their letter dated 26.07.2012 informing them about the approval of the Competent Authority that had been obtained and requesting the respondent no.2 to depute an officer to be present in their office for further necessary action.

(xxviii) On 11.06.2024, the Land Revenue and Disaster Management Department wrote to the respondent no.6

stating that the registration of sale deed is kept in abeyance as the matter is *sub judice*.

Consideration

4. As per the dicta of the Supreme Court in ***Authorised Officer, State Bank of India*** vs. ***C. Natarajan***¹ having regard to the terms of Rule 9 of the SI Rules the notice for auction dated 09.09.2011 constitutes the “invitation to offer”; the bids submitted by the petitioner on 13.10.2011 constitutes the “offer” and upon confirmation of sale in favour of the highest bidder i.e. the petitioner on 13.10.2011 under sub-rule (2) of Rule 9, the contract came into existence. As per the opinion of the Supreme Court once the contract came into existence, the petitioner who was the bidder was bound to honour the terms of the statute under which the auction was conducted and suffer consequences for breach, if any, as stipulated.

5. Therefore, the contract having come into existence on 13.10.2011 between the respondent no.1 and the petitioner, she was bound to honour the terms of the SARFAESI Act and the SI Rules. The petitioner is to suffer the consequence for breach thereof.

¹ (2024) 2 SCC 637

6. At this juncture it would be important to examine Rule 9 of the SI Rules as it existed during the relevant period. It reads as under:

“9. Time of sale, issue 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 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 had 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.*

(5). *In default of payment within the period mention 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 with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determine by him:*

Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalisation of the sale.

(8). *On such deposit of money for discharge of the encumbrances, the authorised officer shall 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 none 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.”

7. Under Rule 9(2) of the SI Rules the sale is required to be confirmed in favour of the purchaser who had offered the highest sale price in his bid which is subject to confirmation by the secured creditor.

8. Rule 9(3) of the SI Rules makes it mandatory for the purchaser to immediately pay a deposit of 25% of the sale price to the authorised officer conducting the sale; and in default of such deposit the property shall forthwith be sold again. The deposit as contemplated in Rule 9(3) of the SI Rules serves as a commitment from the purchaser and insures a serious bid.

9. Rule 9(4) of the SI Rules provides that the balance amount of sale price (i.e. the remainder of the sale price minus the deposit of 25% of the sale price) shall be paid to the authorised officer by the purchaser on or



before the fifteenth day of confirmation of sale of the property or such extended period. Rule 9(3) and 9(4) of the SI Rules read together makes the intention of the legislature clear. It clearly sets out outer limits for payment of the deposit of the 25% of the sale price and the payment of the balance amount of the sale price. The word “or such extended period” appearing in Rule 9(4) of the SI Rules must be read along with the words “on or before the fifteenth day of confirmation of sale” appearing before it. So read the word “or such extended period” cannot be stretched to mean indefinite period. It is also clear that “or such extended period” would imply that the period must be extended by agreement and consent of the secured creditor. It would also mean that this extension cannot be understood in a way that would completely destroy the object and purpose of the said Rule.

10. Rule 9(5) of the SI Rules provides for the consequence of default of payment within the period mentioned in Rule 9(4) of the SI Rules. The consequence is forfeiture of the property and resale thereof. Further, the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold.



11. Rule 9(6) of the SI Rules envisages the issuance of a certificate of sale of the property in favour of the purchaser only upon confirmation of sale by the secured creditor and if the terms of payment have been complied with.

12. Rule 9(9) of the SI Rules provides that 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 9(7). Under Rule 9(7) if the property sold is subject to any encumbrances the authorised officer may 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 costs, expenses and interest as may be determined by him.

13. The petitioner admittedly failed to pay the deposit of 25% of the amount of sale price (which is inclusive of earnest money) which was to be deposited immediately to the authorised officer conducting the sale in terms of Rule 9(3) of the SI Rules. The consequence of the failure to deposit the 25% of the sale price in terms of Rule 9 (3) of the SI Rules was that the property was to be sold again forthwith by the respondent no.1.



14. The extension of period for payment of the balance amount under Rule 9(4) of the SI Rules is limited for the said purpose only and cannot be used for seeking extension of payment of the 25% of the sale price required to be mandatorily paid immediately under Rule 9(3) of the SI Rules. Further, this Court is also of the view that the petitioner has forfeited all claims to the property in terms of Rule 9(5) of the SI Rules.

15. However, the record of the present case paints a grim picture. The actions of some officers of respondent nos. 1 including respondent no. 2 reflects total non-application of mind to the provisions of the SARFAESI Act or the SI Rules. The respondent nos. 1 and 2 were duty bound to follow the provisions of the law under the SARFAESI Act and the SI Rules. They could not have acted in a manner contrary to law. The SARFAESI Act and the SI Rules were enacted for speedy recovery and for benefiting the public at large and does not give any liberty to the bank officers to act de hors the laws. It is settled law that when there is a breach of mandatory requirement the sale is to be treated as null and void.

16. The SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and



enforcement of security interest. Section 13 of the SARFAESI Act deals with enforcement of security interest and provides that notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the SARFAESI Act.

17. However, neither the respondent no.4 who was the borrower of the loan paid the amount of loan to the respondent no.1 nor has the attempt to secure the amount through an auction under the SARFAESI Act resulted in sale of the property and realisation of public debt. The loan was taken by the respondent no.4 in 2007 and the auction of the property which was the secured asset was held on 13.10.2011. Although 14 years have gone by the public debt is still not realised. Now the petitioner who had participated in the auction but failed to pay even the deposit of the 25% of the sale price in the year 2011 to prima facie show her bonafides is attempting to scuttle the attempt of the respondent nos.1 and 2 to sell the property again through the Debts Recovery Tribunal by seeking a writ against the proceeding pending before it.



18. Under Rule 9(3) of the SI Rules the respondent nos. 1 and respondent no. 2 did not have any other option but to sell the property again forthwith. Instead of doing so, with scant regard to the object of the SARFAESI Act and the mandate of the SI Rules, the officers of respondent nos. 1 as well as the respondent no. 2 seem to have indulged the petitioner by first trying to help her obtain a loan keeping the same property as security (which was sanctioned but not disbursed) when she had failed to pay the deposit of 25% of the sale price. Thereafter even before the issuance of certificate of sale envisaged under Rule 9(6) of the SI Rules addressed correspondences to the respondent no.6 as well as the Sub-Registrar to register the sale deed in favour of the petitioner through its correspondences dated 26.07.2012, 19.09.2013 and 10.09.2013. Admittedly only the earnest money had been deposited by the petitioner and due to the failure the petitioner had forfeited her rights on the property.

19. It also transpires that while examining the respondent no.2's correspondence to register the property in the name of the petitioner, the Sub-Divisional Magistrate was of the view that the property could not be registered in favour of the petitioner. Legal advice was thereafter sought from the



Law Department. The matter reached the highest level of the Government when it was placed before the Cabinet. Initially the decision was deferred but later a communication dated 29.04.2023 by the Sub-Divisional Magistrate informed the respondent no.2 that the consent of the competent authority to register the property in the name of the petitioner had been obtained. However, yet by another communication dated 11.06.2024 the Secretary-cum-Relief Commissioner of the Land Revenue and Disaster Management Department wrote to the respondent no.6 stating that the registration of sale deed is kept in abeyance as the matter is *sub judice*. All these acts of the State authorities seem to be solely on the basis of the request made by the respondent no.2 to register the property in the name of the petitioner oblivious of the factual position of non payment of the sale price or the legal implications under the SARFAESI Act and the SI Rules.

20. The acts of some of the officers of the respondent nos. 1 as well as the respondent no. 2 are not only contrary to the scheme of the SARFAESI Act and the SI Rules but give an impression that the law was completely ignored for the cause of the petitioner. The act of the respondent no.2 to repeatedly correspond with the respondent no.6 requesting to register the sale deed in favour of the petitioner who had

not even paid the deposit of 25% of the sale price shocks the conscience of this Court.

21. When the respondent no.1 approached the Debts Recovery Tribunal once again to pursue to realise the public debt against the respondent no.4 the petitioner rushed to the Guwahati High Court seeking the setting aside the order of attachment dated 20.7.2016, notice of attachment dated 13.08.2016 and sale notice dated 29.12.2016 issued by the Recovery Officer of the Debts Recovery Tribunal against the respondent no.4. The petitioner sought to do so only in the year 2017 when the respondent no.1 had already approached the Debts Recovery Tribunal for sale of the property. It is during this proceeding before the Guwahati High Court (after the petitioner was granted leave to deposit the entire amount with interest due against her) the petitioner sought to deposit two drafts for an amount of Rs.58,69,005/- dated 20.02.2017 and the old draft of Rs.6,50,000/- dated 11.10.2011 as “full consideration” which was however not accepted by the respondent no.1. The option given by the Guwahati High Court to the petitioner was to pay the “entire amount with interest due”. However, even in the year 2017 the petitioner did not pay the entire amount with interest due as the sale price in the


year 2011 itself was Rs.65,00,000/-. It was therefore, rightly rejected by the respondent no.1 exercising the “liberty to accept the same” granted to it by the Guwahati High Court in its order dated 10.02.2017.

22. Although Rule 9(3) of the SI Rules is mandatory the petitioner argues that the acts of the respondent no.1 amount to waiver. To constitute waiver there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right or conduct such as warrants an inference of the relinquishment of a known right or a privilege. There is no communication by the respondent no.1 which reflects an intentional relinquishment of the requirement of Rule 9(3) of the SI Rules. There is no communication from the respondent no.1 or 2 waiving its right to be paid the deposit of 25% of the sale price immediately. None of the acts of the respondent nos.1 and 2 amount to conduct such as warrants and inference of the relinquishment of a known right or privilege by them. When the petitioner failed to pay this amount of deposit it was absolutely clear in the year 2011 itself that she was not capable of fulfilling the terms of the contract and therefore, it was incumbent upon the respondent nos. 1 and 2 to forthwith sell the property to

realize the public debt in right earnest. The failures of the respondent nos. 1 and 2 to serve the purpose of the SARFAESI Act and the SI Rules cannot be termed as waiver to the benefit of the petitioner who is lacking in bonafides. Waiver being an intentional relinquishment is not to be inferred by such failures of public duty of the respondent nos. 1 and 2. Further, when Rule 9 of the SI Rules is founded on public policy to realize public debts without delay this Court would be slow to apply the doctrine of waiver to assist the petitioner in the facts of the present case. It is well settled that the writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. The petitioner had voluntarily taken part in the auction proceeding under the SARFAESI Act. This Court is of the view that giving the interpretation of Rule 9 of the SI Rules in the manner suggested by the learned counsel for the petitioner would be doing violence to the provisions of the SARFAESI Act and the SI Rules.

23. Unlike the facts in ***IDBI Bank Limited*** vs. ***Ramswaroop Daliya***² referred to by the petitioner the facts of the present

² (2024) SCC OnLine SC 2878



case is different. It is not a case where the petitioner having paid the 25% of the sale price in terms of Rule 9(3) of the SI Rules the respondents had not accepted the balance auction money. This is a case where there is complete and absolute failure on the part of the petitioner to pay any amount of the sale price whatsoever although having been declared the successful bidder on 13.10.2011.

24. The conflicting pleas made in the writ petition coupled with the petitioner's conduct during the period between the auction and now questions her bonafides. The petitioner has made conflicting pleas regarding payments made by her without substantiating the same by documentary evidence. These pleas have been disputed by the respondent no.1. There are serious disputed questions of facts which arise due to the inconsistent pleadings of the parties which is difficult to be gone into in writ jurisdiction. Although admittedly the petitioner has not made payment of the deposit of 25% of the sale price or the balance of the sale price it is noticed that in the writ petition filed before the Guwahati High Court the petitioner has stated that *"..... on 12.12.2011, the petitioner made the entire payment of the remaining sale amount in respect of purchase of the aforesaid property and pursuant thereto, the respondent no.2 issued a*



sale certificate dated 03.01.2012 wherein, it was certified that the property has been sold out to the petitioner vide auction held on 13.10.2011 and the petitioner was held to be the owner of the property w.e.f. 13.10.2011.” The above statements are factually false and incorrect. When the petitioner indulges on falsehood for her cause the writ court would also hesitate to exercise its discretionary powers in favour of the petitioner.

25. Furthermore, the petitioner would fall within the expression “any person” as specified under Section 17(1) of the SARFAESI Act and hence was entitled to challenge the action of the respondent no.1 before the Debts Recovery Tribunal by filing an appropriate application. The petitioner has not availed this alternative efficacious remedy. The writ petition is liable to be dismissed on this ground as well.

26. The writ petition is therefore dismissed along with the interim application.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting :**Yes**

Internet :**Yes**

to