



 **Dr. Kratika Shrivastava\***

## Legal Decisions Affecting Bankers

**Appellant(s) : Bombay Mercantile Cooperative Bank Ltd.**

**Versus**

**Respondent(s) : M/s. U.P. Gun House & Ors.**

**Court : Supreme Court of India**

**Bench Strength : 02**

**Bench : Justice Sanjiv Khanna & Justice Dipankar Datta**

**Citation : CA Nos. 6244-6245/2021**

### Relevant Provisions of Indian Law

The case refers to following sections of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002:

Section 13 - Enforcement of security interest.

Section 14 - Possession of secured asset.

### Brief Facts about the Case

The sole proprietor of Respondent took a loan with Principal amount of Rs. 2,00,000/- from the Bombay Mercantile Cooperative Bank in 1996 to set-up a firearms business. One of the immovable property of the respondent was mortgaged for securing the loan.

This loan account became Non-Performing Asset (NPA) on 30.02.2002 with total outstanding amount of Rs. 2,39,812.41. The attempt to one-time settlement did not materialise.

In 22.03.2006, a demand notice was served to the respondent under Section 13(2) SARFAESI Act, 2002.

When respondent failed to pay, Bombay Mercantile Cooperative Bank took symbolic possession of the immovable asset on 09.07.2009. Also, the possession notice was published in the newspaper on 22.07.2009.

Under Section 14, the appellant moved to the Court of District Magistrate/Collector, Lucknow for taking the physical possession. As the respondent did not appear in the court, an ex-parte order was passed on 02.12.2010. The respondent's request to recall the order was dismissed on the grounds that he was granted sufficient time and has failed to repay the debt.

The appellant agreed upon respondent's request for one-time settlement (vide letter dated 03.11.2011) for an amount of Rs. 6,36,860/-. The total outstanding amount during that time, reached Rs.15,37,083.41. However, the respondent only paid Rs. 50,000/- (Rupees fifty thousand only) as initial payment and failed to pay the remaining balance of Rs. 5,86,860/- till its due date on 29.03.2012.

On 07.04.2012, the appellant bank revoked the one-time settlement proposal and informed the respondent that he was liable to pay Rs. 15,91,424/- as on 31.03.2012, which was not paid by the respondent.

The appellant bank, took possession of the said property on 14.07.2012 and made an inventory of the immovable assets. According to the valuation

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report, the value of the asset was estimated to be Rs. 29,70,000/-.

The appellant Bank mentioned that they had sent an auction notice to the respondent on 30.11.2012 specifying that on 31.12.2012 auction of the property will be held. The auction sale notice was also published in 02 newspapers on the same date.

The respondent challenged the auction sale by filing a writ petition before the Lucknow Bench, High Court of Judicature at Allahabad on 14.12.2012, however, the writ petition was dismissed.

The auction was held as scheduled and the highest bid by Mr. Abdul Haleem Siddiqui of Rs. 42,00,000/- was accepted. Subsequently, a sale deed was executed in favour of Mr. Abdul Haleem Siddiqui on 21.03.2013 and the possession over the property was given to him. He had then build flats on that property, which were sold to third parties.

The respondent wrote to appellant for settling his dues amounting to Rs. 6,23,809/- post auction along with the cheque of the said amount. The cheque was returned by the appellant Bank and the respondent was informed that the total outstanding amount was Rs. 19,30,995/-.

The respondent disputed service of notice dated 30.11.2012 for the auction. The appellant's official records show the letter dated 30.11.2012, however, it was not able to provide documentary proof with respect to the actual service.

The respondent had challenged the service of auction notice dated 30.11.2012, plea was accepted by the Debts Recovery Tribunal (DRT) at Lucknow, by quashing the auction vide judgment and order dated 30.10.2017. This order had been upheld by the Debts Recovery Appellate Tribunal (DRAT) at Allahabad and then High Court.

The appellant had sent a cheque (vide letter dated 21.03.2013) to the respondent of the balance amount

after adjusting all the dues of Rs. 22,53,004/- However, respondent has not accepted the same contending that the service of notice is mandatory prior to sale of the mortgaged property under SARFAESI Act, 2002. Therefore, the remaining amount of Rs. 22,53,004/- has been with the appellant since 21.03.2013.

### **Findings and Observations of Supreme Court**

The Supreme Court noted that that the averments made in the writ petition on service of the notice dated 30.11.2012 were rather ambiguous and unclear. Also, it is clear that the respondent was well aware of about the auction and had also accepted that he had read the notice for the sale in newspaper. The respondent also admitted that he was also present during the auction held on 31.12.2012.

Considering these facts, the court was satisfied that the respondent was completely aware of the auction notice dated 30.11.2012. Also, he had, within 14 days after that, filed a writ petition at the High Court.

During the proceedings, the respondent also mentioned that prior to auction, he had entered into the agreement to sale the said property to Mr. Abdul Haleem Siddiqui for Rs. 29,000,00/-. Mr. Abdul Haleem Siddiqui had also given an advance amount of Rs. 1,000,00/- in this regard. Later, Mr. Abdul Haleem Siddiqui became the auction purchaser.

Mr. Abdul Haleem Siddiqui (auction purchaser) had built & sold flats to third parties on the said property. The court also noted that there was lapse on the part of the appellant bank, as it had not maintained proper records of the service of notice dated 30.11.2012.

Considering these facts and exercising the power under Article 142 of the Constitution of India, the Supreme Court directed the appellant bank to pay to the respondent Rs. 54,00,000/- in full settlement of his claims within a period of 5 weeks from the date when a copy of this order is received. In case, payment is not made by the appellant within the said period, the

appellant bank Ltd. shall be liable to pay an interest on Rs. 54 lakhs at the annual rate of 12% from the date of this order till the date of actual payment.

The impugned orders passed by the High Court were set aside and the sale by the appellant in favour of Abdul Haleem Siddiqui was upheld and confirmed.

### Takeaways from the case

1. The Secured Creditor namely banks and financial institutions may initiate action under SARFAESI Act, 2002 only when the account has turned as NPA (except where borrower has raised funds through issue of debt securities).
2. The Secured Creditor has to give a written notice in to the defaulting borrowing to repay his debt within 60 days from the date of notice. The notice should clearly mention the total outstanding amount and details of secured assets which secured creditor intends to enforce in case of non-payment of all the dues.
3. The borrower may make a representation/objection upon receipt of the notice, in case the representation/objection is not acceptable by the secured creditor, it is required to communicate the same to the borrower within 15 days of receipt of the representation/objection.
4. In case a borrower is not able to fully discharge his liabilities, Secured creditor may take a recourse as specified in SARFAESI Act, 2002.
5. The Secured Creditor has to give a written request for taking the possession District Magistrate/Chief Metropolitan Magistrate within whose jurisdiction the secured asset is situated.
6. The Secured Creditor may fix a reserve price for the immovable asset after obtaining the valuation report from the approved valuer.
7. The sale may be effected by holding public action/by inviting tenders from public/by private treaty or by inviting quotation from people dealing with similar secured assets.
8. The borrower should be provided notice of thirty days about the sale of immovable secured asset. The immovable property could not be sold before the expiry of the said 30 days.
9. The sale is confirmed in favour of the highest bidder upon confirmation with the secured creditor.



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