

Before Ramachandra Rao & Jasjit Singh Bedi, JJ.

M/S PAL ALLOYS & METAL INDIA PRIVATE LIMITED AND OTHERS—Petitioner

versus

ALLAHABAD BANK AND OTHERS—Respondents

CWP No.6402 of 2019

December 10, 2021

Constitution of India, 1950—Art.226—Transfer of Property Act, 1882—Ss.54 and 60—Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002—Ss.13, 14 and 17—Right of Redemption—Writ petition filed by borrower and guarantors—Owners of residential house—Loan account classified as Non-Performing Asset—Pursuant to proceedings under SARFAESI Act—Respondent Bank took physical possession of residential house—Despite part payment before High Court, auction conducted—Question to be determined—Till when can right of redemption be exercised by mortgagor—No equity or right in property created in favour of the purchaser by contract between the mortgagee and proposed purchaser—Only on execution of conveyance, ownership passes from one party to another—Mortgagor cannot be held to have lost right of redemption just because property was put to auction—Amendment to Section 13(8) SARFAESI Act—Inconsequential to the right to redeem—Legislature did not intend to deal with the right of mortgagor to redeem the mortgage when they amended the provision—The amended Section 13(8)—Intended to only deal with date when secured creditor's right to transfer secured asset should stop and nothing more.

Held that, (a) till what time or date can the right of redemption of the mortgage be exercised by the mortgagors/borrowers in the light of the amendment to Section 13(8) of the SARFAESI Act?

(Para 55)

Further held that, is it upto the date of transfer of the asset (as is contended by the petitioners) or is it upto the date of publication of the sale notice as per the amended S.13(8) of the SARFAESI Act, (as is contended by the 1st respondent Bank)?

(Para 56)

Further held that, the right of a mortgagor to redeem a mortgage is provided in Section 60 of the Transfer of Property Act, 1882. It states:

“60. Right of mortgagor to redeem:-

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided, that the right conferred by this section has not been extinguished by the act of the parties or by decree of a Court.

(Para 57)

Further held that, in 2004, in the context of right conferred on a State Financial Corporation to sell assets of it's borrower under Section 29 of the State Financial Corporations Act, the Supreme Court held in Gajraj Jain v. State of Bihar that the action of the State Financial Corporation in handing over the estates to the auction purchaser under a down payment of Rs.28.85 Lacs, did not prevent the borrower from exercising the right of redemption. It held:

“Under Sec.60 of the Transfer of Property Act, 1882, equity of redemption existed in favor of the Company. A mere agreement of sale of it's assets cannot extinguish the equity of redemption, it is only on execution of conveyance that the mortgagor's right of redemption will be extinguished.”

Thus even if the sale of secured assets is under a special statute like State Financial Corporations Act, there is no deviation from the general principle that the mortgagor's right of redemption is not extinguished till the execution of conveyance.

(Para 60)

Further held that, in India, there is no equity or right in property created in favor of the purchaser by the contract between the mortgagee

and the proposed purchaser; only on execution of conveyance, ownership passes from one party to another; and that the mortgagor cannot be held to have lost the right of redemption just because the property was put to auction.

(Para 61)

Further held that, now we shall consider whether the enactment of a provision like Sec.13(8) of the SARFAESI Act has made any change in this law?

(Para 64)

Further held that, the right of redemption of the mortgagor/borrower is not extinguished until the sale certificate is issued and the sale is registered in favor of the auction purchaser even where the sale is held under the SARFAESI Act (as is the position as per Sec.60 of the Transfer of Property Act). It does not get extinguished on the date fixed for sale, i.e. the date of public auction/e-auction (though Sec.13(8) says so).

(Para 68)

Further held that, in our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec.13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un-amended Section 13(8) of the SARFAESI Act was in force. The amended Sec.13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

(Para 84)

Further held that, 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 Securitization 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 Kumar*, (2014) 5 SCC 610, 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.

(Para 87)

Further held that, accordingly, Points-(b) and (c) are answered as under:-

(i) The Writ Petition is allowed;

(ii) Subject to the petitioners paying the entire balance outstanding dues with applicable interest to the 1st respondent-Bank within four weeks from today, the 1st respondent-Bank shall close the loan account of the petitioners and restore possession of their residential property to them; No costs.

(iii) If not, this Writ Petition shall stand dismissed with costs of Rs.25,000/- without reference to this Court;

(iv) In the event the petitioners comply with Clause (ii) above, the amount deposited by the respondents No.2 and 3 with the 1st respondent-Bank be refunded to them with interest rate @7% per annum from the respective dates of deposit till date of refund; and such refund shall be made within one week of the petitioners' complying with Clause (ii) above.

(Para 132)

Aalok Jagga, Advocate with
Sumit Verma, H.S. Jagdev and
Deepshikha Gupta, Advocates
for the petitioners.

I.P. Singh, Advocate
for respondent No.1-Bank.

Ranjit Chawla, Advocate
for respondents No.2 and 3.

Rajinder Singh, Advocate
for respondents No.4 to 6.

M.S. RAMACHANDRA RAO, J.

The background facts

(1) Petitioner No.1 is the Company and petitioners No.2 and 3 are its Directors.

(2) Petitioner No.1 had availed certain credit facilities from the Allahabad Bank (respondent No.1) and petitioners No.2 and 3 stood its guarantors. The residential House No.758, Sector 14, Urban Estate, Faridabad of petitioner Nos. 2 and 3 was mortgaged to the respondent-Bank alongwith hypothecation of stock, plant and machinery.

(3) The loan account of petitioner No.1 was classified as a Non-Performing Assets (for short – 'NPA') on 31.10.2017.

(4) Thereafter, respondent-Bank issued notice dt. 23.11.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereinafter referred to as 'SARFAESI Act') demanding payment of Rs.2,62,98,047.72.

(5) The respondent-Bank filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Faridabad. On 14.06.2018, the said application was allowed and the respondent-Bank was permitted to take physical possession of the residential house of the petitioners.

(6) Since the possession was not being delivered, the respondent-Bank filed CWP No.565 of 2019 before this Court impleading the petitioners herein as respondents No.3 to 5.

(7) Notice of motion was issued for 15.02.2019 by this Court.

(8) But on 14.02.2019, the officials of the respondent-Bank along with the Tehsildar, Faridabad, went to the residential house of the petitioners to take possession. At that time, the 2nd petitioner gave a letter dt.14.2.2019 to Tehsildar, Faridabad that he will himself give possession of the property within 15 days and undertook to repay whole amount due to respondent-Bank within 90 days.

(9) But the possession of the property was taken by the respondent-Bank on 14.02.2019 in spite of the said letter.

(10) In CWP No.565 of 2019, the 2nd petitioner filed an affidavit of undertaking (Annexure-P.3) to clear outstanding amount within 3 months from 15.02.2019 and sought restoration of the house of the petitioners. He also undertook to deposit Rs.70 Lacs within one month and rest of the amount within 3 months. He stated that if he has not been able to clear the outstanding dues within 3 months, he would

vacate the residential house and hand over peaceful vacant possession to the authorized officer of the respondent-Bank. The same was taken on record on 15.02.2019.

(11) Matter was adjourned to 25.02.2019

(12) On 25.02.2019, the 2nd petitioner appeared before this Court, and to show petitioners' bona fides, produced two demand drafts of Rs.25 Lacs each (Total Rs.50 Lacs) before this Court and they were handed over to the counsel representing the respondent-Bank.

(13) By that time, auction notice dt. 22.02.2019 (Annexure-P.5) was issued by the respondent-Bank proposing to sell residential property of the petitioners fixing the date of auction as 28.03.2019.

The present Writ Petition

(14) Petitioners then filed the present Writ Petition to quash the auction notice dt. 22.02.2019 (Annexure-P.5).

(15) They contended that they had paid a sum of Rs.30 Lacs on July 2018 apart from a sum of Rs.50 Lacs which was paid on 25.02.2019, that they have thus paid Rs.80 Lacs, and that they undertake to deposit a further Rs.70 Lacs by 15.04.2019. They also undertook to pay balance amount of Rs.105 Lacs by 15.05.2019. They contended that the only residential house of the petitioners has been put to sale and, therefore, the auction notice dt. 22.02.2019 should be quashed and they must be restored back possession of the said property.

Events after filing of this Writ petition

(16) Notice of motion was issued in this Writ Petition on 18.03.2019 and Mr. I.P. Singh, Advocate accepted notice on behalf of 1st respondent- Bank. Matter was then adjourned to 22.04.2019, to be heard alongwith CWP No.565 of 2019.

(17) On 18.03.2019 itself in CWP No.565 of 2019, which had been filed by the Bank to direct the District Magistrate, Faridabad, to hand over possession of the residential house of the petitioners herein, a statement was made by the counsel for respondents No.3 to 5 therein (petitioners herein) that a sum of Rs.70 Lacs would be deposited on or before 15.04.2019 and that the remaining amount due shall be deposited on or before 15.05.2019. Therefore, the Bench directed that a sum of Rs.70 Lacs, in terms of the statement made by the petitioners' counsel, be deposited on or before 15.04.2019 and adjourned CWP No.565 of 2019 to 22.04.2019.

(18) On 29.03.2019, the petitioners deposited a sum of Rs.1.75 Crore in no lien account of one Mr. Shirish Goel and wrote an Email dt.29.03.2019 informing the 1st respondent-Bank of said deposit.

(19) But on 28.03.2019, the auction was held and respondents No.2 and 3 became the highest bidders by quoting Rs.3,12,00,000/-. They also deposited Rs.78,50,000/- equivalent to 25% of the bid amount as per the terms and conditions of sale notice and requested the Bank to declare them as the highest bidder and confirm the same.

(20) On 29.03.2019, the 1st respondent-Bank wrote a letter to respondents No.2 and 3 confirming that respondents No.2 and 3 have been declared as the highest bidder and directed them to deposit the balance 75% by 12.04.2019. It also stated that in case default of balance payment by the said date the amount deposited would be forfeited. It also mentioned in the said letter that *the sale is subject to the outcome in the instant Writ Petition i.e. CWP No.6402 of 2019* wherein the auction of the property has been challenged.

CM No.5896-CWP-2019

(21) Petitioners then filed CM No.5896-CWP-2019 in this Writ Petition to restrain the respondent-Bank from confirming the sale of their residential property in favour of respondents No.2 and 3.

(22) They contended in this application that on 29.03.2019 itself they had sent Email to the 1st respondent-Bank that they had deposited Rs.1.7 Crore in no lien account, that the Bank is intending to sell their property in favour of respondents No.2 and 3, and if the sale is confirmed irreparable loss and injury would be caused to the petitioners.

(23) They contended that the right of redemption even under Section 13 (8) of the SARFAESI Act had already been exercised by them as is evident from the orders passed from time to time including the last order dt. 18.03.2019; that they had already indicated, even at the time of taking physical possession on 14.02.2019, that they would pay the entire amount due; that this was prior to the issuance of sale notice dt.22.02.2019; and since the petitioners had already exercised their right to redeem the mortgage, the respondent-Bank cannot sell the property and the petitioners are ready to redeem the mortgage.

(24) This application had been moved on 11.04.2019 and listed on 12.04.2019, the last day before the short summer break vacations.

(25) A Division Bench of this Court noted that the petitioners had

deposited Rs.1.7 Crore on 29.03.2019 to show their bona fide for discharging their liability, and though the 1st respondent-Bank had conducted an auction, the same had not been confirmed by that date and the confirmation was scheduled to take place on that day. It issued notice of that application i.e. CM No.5896-CWP of 2019 for 22.04.2019 and *directed on 12.4.2019* that, in the meantime, *the sale shall not be confirmed till the next date of hearing.*

(26) While passing this order, the counsel for the respondent-Bank does not appear to have been heard.

(27) The matter was listed next on 22.04.2019 and at the request of both the parties it was adjourned to 29.05.2019 and the interim order was directed to continue.

(28) In the meantime, on 23.05.2019, written statement was filed by the 1st respondent-Bank.

The stand of the 1st respondent-Bank:

(29) Firstly, the 1st respondent-Bank contended that the petitioners have statutory remedy under the SARFAESI Act and they have not made out any case for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

(30) They contended that the petitioners' intention is only to stall the recovery proceedings initiated by the 1st respondent-Bank under the SARFAESI Act, that they are defaulters and an amount of more than Rs.4.70 Crore with future interest and other expenses w.e.f. 01.04.2019 was recoverable by the 1st respondent-Bank in the 3 loan accounts of the petitioners and their sister concern.

(31) It is contended that the auction held on 28.03.2019 was conducted as per the provisions of the SARFAESI Act and the Rules made thereunder and it was sold in the said auction for Rs.312 Lacs and there is no irregularity in the sale proceedings.

(32) The respondent-Bank contended that even otherwise the petitioners had a remedy under Section 17(1) of the SARFAESI Act .

(33) It was pointed out that the Writ Petition had come up for hearing earlier, but no stay order was granted by the Court though the petitioners had offered to deposit their amount with the respondent-Bank.

(34) It is stated that CM No.5896-CWP-2019 had been filed by the petitioners without serving a copy of the same on the counsel of the

1st respondent-Bank, and on 12.04.2019, in the absence of the counsel for the respondent-Bank, the petitioners secured the order that the mortgaged property be not sold. So the 1st respondent-Bank sought for vacation of the order granted by this Court on 12.04.2019 staying confirmation of the sale in favour of the respondents No.2 and 3.

(35) It is also stated that the sale stood confirmed in favour of respondents No.2 and 3 in view of the letter dt. 29.03.2019 addressed by the 1st respondent-Bank to them and that the Writ Petition has, therefore, become infructuous.

(36) It is stated that the auction purchasers had made a request on 08.04.2019 for extension of time for deposit of the balance amount of Rs.2,33,50,000/- towards the sale consideration, and the time had been extended till 26.04.2019 vide letter dt.12.04.2019 of the 1st respondent-Bank. It is stated that the auction purchasers had deposited another amount of Rs.1.00 Crore on 18.04.2019 and the total amount deposited was Rs.1,78,50,000/-.

(37) It is pointed out that an One Time Settlement (for short - 'OTS') proposal was made with regard to the sister concern of the petitioner No.1, namely, M/s Stuti Metals Private Limited which had been accepted by the 1st respondent-Bank for Rs.225 Lacs to be paid on or before 07.10.2018 and the petitioners failed to comply with it. It is also stated that there was an education loan taken in favour of the daughter of the 2nd petitioner which was agreed to be repaid by 30.10.2018 through an undertaking dt. 06.10.2018, but this was also not paid and the OTS was cancelled on 14.11.2018.

(38) It is contended that even after auction of the property, petitioners submitted a letter of request for OTS which was considered by the competent authority of the respondent-Bank and they were given an opportunity to deposit the outstanding amount in all the 3 accounts through a letter dt.29.03.2019, but the petitioners, without complying with it, filed the instant Writ Petition and sought a stay of sale of the property by concealing facts.

(39) It is contended that the petitioners did not allow possession of the secured assets in the loan account of M/s Stuti Metals Private Limited in spite of the orders passed by the District Magistrate on 15.01.2019 after approaching this Court.

(40) *It is contended that the petitioners are seeking redemption of property which had been sold by the 1st respondent-Bank in a public auction and the said plea was not sustainable as per amended*

provisions of Section 13(8) of the SARFAESI Act which provided that only before issuance of sale notice, right of redemption is available and not thereafter. It was stated that prior to the amendment of Section 13(8) of the SARFAESI Act, the right of redemption was available to the mortgagor/borrower till the date of sale, but not after the amendment.

(41) It is contended that even if the petitioners had deposited Rs.1.70 Crore, said deposit had been made in the account of third party Mr. Shirish Goel and the respondent-Bank cannot appropriate it to the loan dues of the petitioners without any mandate from the account holder. It is also stated that on the last date of hearing, petitioners had undertaken to pay Rs.70 Lacs in the loan account, but no such amount was deposited as per the undertaking given by them.

(42) It is also stated that the 1st respondent-Bank could get physical possession of the secured assets only after orders were passed by this Court in CWP No.565 of 2019 as the petitioners have been managing with the concerned authority and ensured that delivery of the residential property of the petitioners did not happen despite orders passed by the District Magistrate.

The implead application of the auction purchasers:

(43) The auction purchasers of the residential property of the petitioners in the public auction held on 28.3.2019 then filed on 29.10.2019 CM No.17206-CWP of 2019 to implead them as respondents No.2 and 3 in the Writ Petition.

(44) The said application was taken up for hearing on 18.11.2019 and notice was issued for 28.11.2019. When the matter was next listed on 03.12.2019, the said application was allowed and the auction purchasers were impleaded as respondents No.2 and 3.

Stand of auction purchasers/ respondents No.2 and 3:

(45) Respondents No.2 and 3 contended that they were the highest bidders and auction purchasers of the residential property/secured asset in the auction held by the 1st respondent-Bank on 28.03.2019; that they had paid an amount of Rs.312 Lacs and deposited the 25% and an amount of Rs.78,50,000/- and the sale had been confirmed on 29.03.2019 by the 1st respondent-Bank *subject to the outcome of the instant Writ Petition.* They stated that they sought the extension of time for make payment of balance 75% which was agreed to by the 1st respondent on 12.04.2019 and time was extended for

deposit of balance amount of 75% upto 26.04.2019; that respondent No.2 had, through a letter dt. 26.04.2019, again sought extension of time upto 29.05.2019 to deposit the balance amount and said extension was granted by the 1st respondent on 26.04.2019. It is stated that respondents No.2 and 3 again sought extension of time vide letter dt. 30.04.2019 and time for deposit of the balance amount was extended upto 05.06.2019 vide letter dt. 28.05.2019 of the respondent-Bank; and that the 1st respondent-Bank also informed respondents No.2 and 3 that because the case is pending before this Court, no sale certificate can be issued.

(46) It is further stated that on 01.06.2019 the entire bid amount of Rs.3,12,00,000/- had been deposited, but no sale certificate had been issued and possession of the property had also not been granted to them. They prayed for issuance of sale certificate in favour of respondents No.2 and 3.

(47) Thereafter, matter was adjourned on 15.01.2020 to 20.01.2020, 21.01.2020, 29.01.2020.

(48) On 29.01.2020, this Court recorded that the petitioners' counsel stated that a sum of Rs.1.70 Crore was deposited with the 1st respondent-Bank, but the counsel for the 1st respondent-Bank stated that though the amount was deposited, but it was withdrawn on 24.04.2019. So he was permitted to file an affidavit to this effect on the said date. Subsequently, on account of Covid-19 Pandemic, the matter does not appear to have been listed for a considerable amount of time.

(49) An application for preponement of date of hearing was filed by respondents No.2 and 3 vide CM No.11173-CWP of 2021 and the matter was preponed by order dt. 26.10.2021 to 22.11.2021 from 17.12.2021.

(50) The matter was heard in part on 22.11.2021, 03.12.2021, 10.12.2021.

(51) CM No.3368-CWP of 2020 was filed by the Writ Petitioners to receive the following documents:-

“(1) Copy of Email dt. 29.03.2019 written to the Bank (Annexure-A.1).

(2) Copy of the Statement of Account depicting deposit of Rs.1,75,10,000/- (Annexure-A.2).

(3) Email dt. 12.04.2019 to respondent-Bank stating that he has bona fide intention to settle the account and requested to consider his case for final payment sympathetically (Annexure- A.3).

(4) copy of Demand Draft of Rs.70 Lacs on 15.04.2019 (Annexure-A.4).

(5) The petitioner, on 30.12.2019, requested the respondent-Bank to consider its case for settlement under Scheme for MSME i.e. Project “Sashakt” vide instruction Circular dt. 01.04.2019, but the Bank has not communicated the settlement amount (Annexure-A.5).”

(52) The said application was allowed on 10.12.2021.

(53) The reply filed by the 1st respondent-Bank to the said CM along with documents to the said reply were taken on record.

(54) Arguments were heard on 10.01.2021, 17.01.2021 and orders were reserved.

Points for consideration

(55) From the pleadings and contentions of the parties, the following points arise for consideration:-

“(a) Till what time or date can the right of redemption of the mortgage be exercised by the mortgagors/borrowers in the light of the amendment to Section 13(8) of the SARFAESI Act?

(b) Whether the petitioners are entitled to any relief?

(c) If so, to what relief?”

POINT (a):

(56) Under this point we shall consider upto which date a mortgagor/ borrower has the right to redeem the mortgage.

Is it upto the date of transfer of the asset (as is contended by the petitioners) **or** is it upto the date of publication of the sale notice as per the amended S.13(8) of the SARFAESI Act, (as is contended by the 1st respondent Bank)?

I The General law:

(57) The right of a mortgagor to redeem a mortgage is provided in Section 60 of the Transfer of Property Act, 1882. It states:

“60. Right of mortgagor to redeem:-

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

PROVIDED that the right conferred by this section has not been extinguished by the act of the parties or by decree of a court.

xx xx xx xx xx”

(58) In 1965, **Murarilal** versus **Devkaran**¹, a mortgage deed sought to be redeemed was executed on 19.3.1919 for Rs.6500/-. It stipulated that the mortgage should be repaid in 15 years. It further stipulated that if the payment was not made within 15 years, the mortgagee would become the owner of the property. In a suit for redemption, the mortgagor contended that his right to redeem was alive even though the stipulated period of 15 years had passed. The mortgagee took the stand that after the expiry of the period of 15 years, the property had become the absolute property of the mortgagee. Though the trial court dismissed the suit, the Rajasthan High Court allowed the appeal and held that the stipulation as to the mortgagor’s liability to repay the loan within 15 years did not bar the suit for redemption, because the said stipulation amounted to a clog on the equity of redemption and as such, could not affect the mortgagor’s right to redeem; that the transaction, in substance, was a mortgage and not a sale, and so his right to redeem was alive and could be enforced by the suit. On appeal, A Constitution Bench of the Supreme Court upheld the decision of the High Court and held that the *equitable doctrine ensuring*

¹ AIR 1965 SC 225

the mortgagors equity of redemption in spite of a clog on such equity by stipulation in the mortgage deed, applied. It declared that in dealing with mortgage transactions unfair, unjust or oppressive stipulations unreasonably restricting the mortgagor's right to redeem, the Court would be justified in refusing to enforce such stipulations and that the paramount character of the equity of redemption requires recognition, subject to the general law of limitation prescribed in that behalf.

(59) In 1977, *Narandas Karsondas* versus *S.A. Kamtam*², the Supreme Court held that the right of redemption is available to the mortgagor unless it has been extinguished by the 'act of parties'; that combined effect of Sec.54 of the Transfer of Property Act and Sec.17 of the Registration Act is that a contract for sale in respect of immovable property of value more than rupees one hundred without registration cannot extinguish the equity of redemption; and in India, it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption is extinguished. **More importantly it was declared that conferment of power to sell without intervention of the Court in a mortgage deed will not deprive the mortgagor of his right of redemption. It held that the extinction of the right of redemption has to be subsequent to the deed conferring such power; and the right of redemption is not extinguished at the expiry of the period; that the equity of redemption is not extinguished by mere contract for sale; and the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed.**

(60) In 2004, in the context of right conferred on a State Financial Corporation to sell assets of it's borrower under Section 29 of the State Financial Corporations Act, the Supreme Court held in *Gajraj Jain* versus *State of Bihar*³ that the action of the State Financial Corporation in handing over the estates to the auction purchaser under a down payment of Rs.28.85 Lacs, did not prevent the borrower from exercising the right of redemption. It held:

“Under Sec.60 of the Transfer of Property Act, 1882, equity of redemption existed in favor of the Company. A mere agreement of sale of it's assets cannot extinguish the equity of redemption, it is only on execution of conveyance that the mortgagor's right of redemption will be extinguished.”

² (1977) 3 SCC 247

³ (2004)7 SCC 151

Thus even if the sale of secured assets is under a special statute like State Financial Corporations Act, there is no deviation from the general principle that the mortgagor's right of redemption is not extinguished till the execution of conveyance.

(61) The above principle was reiterated in 2011 in *M/s L.K. Trust* versus *EDC Ltd., and others*⁴ and it was held that in India, there is no equity or right in property created in favor of the purchaser by the contract between the mortgagee and the proposed purchaser; *only on execution of conveyance, ownership passes from one party to another; and that the mortgagor cannot be held to have lost the right of redemption just because the property was put to auction.*

(62) It was also held that *a mortgage being a security for the debt, the right of redemption* continues although the mortgagor fails to pay the debt at the due date; and that any provision to prevent, evade or hamper redemption is void.

(63) In 2017, the Supreme Court considered in *Allokam Peddabbayya and another* versus *Allahabad Bank and others*⁵ a case where property had been mortgaged in 1979 by its owners to the Bank. The Bank filed a suit for recovery of the loan in 1987, but prior thereto in 1985, the mortgaged property was sold in 1985 to the plaintiffs. In auction sale held by the Court the property was sold in 1993, sale certificate was also issued to him and he was put on possession in 1997. The Supreme Court reiterated that a mortgagor has a right of redemption even after sale has taken place pursuant to final decree but before confirmation of sale, but the plaintiffs therein lost the right to sue for redemption of the mortgaged property by virtue of the proviso to Sec.60, no sooner that the mortgaged property was put to auction sale in a suit for foreclosure and sale certificate was issued in favor of the auction purchaser. Thereafter there remained no property mortgaged to be redeemed. So the plaintiffs, who purchased the property from the mortgagor in private sale cannot sue for redemption.

II. The law relating to the availability of right of redemption after the unamended Sec.13(8) was enacted:

(64) Now we shall consider whether the enactment of a provision like Sec.13(8) of the SARFAESI Act has made any change in this law?

⁴ (2011) 6 SCC 780

⁵ (2017) 8 SCC 272

(65) Section 13(8) of the SARFAESI Act as originally enacted stated as under:-

“Sec.13.

...

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”

(66) Thus this provision seems to suggest that only if full payment of dues were paid by the *date fixed for sale*, the right of redemption might be lost. But that is not the what the Supreme Court held in *Mathew Varghese* versus *M. Amritha Kumar and others*⁶.

(67) In *Mathew Varghese* (6 Supra), after referring in para 38, pg.637 to the principle laid down in *Narandas Karsondas* (2 Supra) [that a mere conferment of power to sell without intervention of the Court in the mortgage deed itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and the mortgagor’s right to redeem will survive *until there has been completion of sale by the mortgagee by a registered deed*], the Supreme Court held:

“ .. we fail to note any distinction to be drawn while applying the above said principles, even in respect of the sale of secured assets created by way of a secured interest in favor of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant rules. We say so, in as much as, we find that even while setting out the principles in respect of redemption of a mortgage by applying Sec.60 of the TP Act, this Court has envisaged the situation where such mortgage deed provided for resorting to the sale of the mortgaged property without the intervention of the Court”

⁶ (2014) 5 SCC 610

(68) In para 39 at pg.638 it was emphasized again in the following terms:

“ 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 asset created in favor 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.”

Therefore as per the decision in Mathew Varghese (6 supra), the right of redemption of the mortgagor /borrower is not extinguished until the sale certificate is issued and the sale is registered in favor of the auction purchaser even where the sale is held under the SARFAESI Act (as is the position as per Sec.60 of the Transfer of Property Act). It does not get extinguished on the date fixed for sale, i.e. the date of public auction/ e-auction (though Sec.13(8) says so).

(69) The Supreme Court then went on to make a very important observation in para 41 at pg.639 as under:

“... we wish to state that the endeavor or the role of a secured creditor in such a situation while resorting to any sale for the realization 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.”
(emphasis supplied)

III. The law relating to the availability of right of redemption after the amendment to Sec.13(8) was enacted in 2016 w.e.f. 1.9.2016:

(70) Vide Act 44 of 2016, the unamended Sec13 (8) was substituted by the amended Sec13 (8) as under:-

“ Sec.13

...

(8) Where the amount of dues of the secured creditor

together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—
(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.]”

(71) It is the contention of the counsel for the petitioners that the law relating to redemption of mortgage was that such a right was incidental for the subsistence of mortgagor so long the mortgage itself subsists, that such a right cannot be extinguished except by the Act of parties or by the decree of Court, and a mortgage being security for the debt, the right of redemption continues although mortgagor failed to pay the debt at the due date, and in India it is only on execution of conveyance, the right of redemption gets extinguished. He contended that the amendment to Section 13(8) of the SARFAESI Act vide Act 44 of 2016 had no bearing on the right of redemption available to a mortgagor and the law in India continues to be the same.

(72) He also placed on record the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016, on the basis of which 2016 Amendment of Section 13(8) of the SARFAESI Act was proposed and made; and the decision of the Telangana and Andhra Pradesh High Court in *M/s Concern Readymix, rep. by its Proprietor versus Authorised Officer, Corporation Bank, Zonal Office and another*⁷.

(73) Counsel for the respondents, however, refuted the said contentions and relied upon the decision of the Supreme Court in *Shakeena and another versus Bank of India and others*⁸. They contended that *prior* to the amendment of Section 13(8) of the SARFAESI Act, the right of redemption could be exercised by the

⁷ 2019(3) Andhra Legal Decisions 384 : Law Finder Doc Id # 1380151

⁸ 2019 (5) R.C.R. (Civil) 689 (SC)

mortgagor at any time before the date fixed for sale or transfer, and *after* the amendment made in 2016 such right of redemption can be exercised before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer. They disputed the contention of the counsel for the petitioners that the right of redemption of the mortgagor/borrower continues till the transfer of the secured asset is made by way of issuance of a sale certificate to the auction purchasers.

(74) This being a very important issue requires consideration by this Court because in the instant case prior to the sale by the 1st respondent-Bank, the Writ Petition had been filed, and it is the contention of the petitioners that in view of the order dt. 12.04.2019 the sale itself has not been confirmed and sale certificate has not been issued, and so the petitioners' right to redeem their residential house, which has been mortgaged to 1st respondent-Bank, survives.

(75) It is interesting to note that para 24 of the Report of the Joint Committee referred to above deals with the proposed amendment to Section 13(8) of the SARFAESI Act and gives a heading "*Provisions to stop secured creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI Act.*"

Thus the amendment was proposed w.r.t. when to stop the secured creditor from selling/transferring the secured asset. The words 'when to stop the exercise of right of redemption by the borrower/mortgagor' were not used.

(76) In the said Report, at pg.12, Clause 11(ii) of the Bill which proposed to amend Section 13(8) of the SARFAESI Act is noted. After extracting the existing Section 13(8) of the Act which stands as under:-

"If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."

(77) the proposed modification to Section 13(8) is set out also at pg.12 as under:-

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by

him are tendered to the secured creditor at any time before the date fixed for lease, assignment or sale of the secured assets,-

- (i) the secured assets shall not be leased, assigned or sold by the secured creditor; and
- (ii) in case, any step has been taken by the secured creditor for lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for lease or assignment or sale of such secured assets.”

(78) Strangely, on the next page at page 13, the following is stated:-

“The Committee after examining the proposed amendment and the existing Rules in this regard decide to modify proposed Clause 11(ii) [section 13(8) of the principal Act] as under:

“(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

- (i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and
- (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.”

(79) Nothing is mentioned as to why the proposal indicated in Page-12 was changed on page-13 differently.

(80) Admittedly, what is stated in page-13 was passed in the Lok Sabha and the Rajya Sabha and then it became the Act 44 of 2016 and came into effect on 01.09.2016.

(81) But the important thing to note is that this Report does not indicate that the Committee had even considered Section 60 of the

Transfer of Property Act, 1882, which provides the general law of right to redeem a mortgaged asset of a mortgager vis-a-vis the provisions of the SARFAESI Act.

(82) It no where says that there was an intention to bring about a change with regard to the time before which a mortgagor can exercise his right to redeem the mortgage.

(83) Even the heading of Para 24 of the Report which says "*Provisions to stop secure creditor to lease or assignment or sale in the prescribed conditions - Amendment to Section 13(8) of the SARFAESI Act*" seems to suggest that the focus of the Committee was on the date when the secured creditor's right to lease or assignment or sale would stop.

(84) In our considered opinion, it is clear that the legislature did not have any intention to deal with the right of mortgagor to redeem the mortgage when they amended Sec.13(8) or to modify it in any manner; and amendment cannot be said to have intended to modify the existing law which continued even when the un-amended Section 13(8) of the SARFAESI Act was in force. The amended Sec.13(8) was intended to only deal with the date when the secured creditor's right to transfer the secured asset should stop and nothing more.

(85) This aspect was also considered by a Division Bench of the Telangana and Andhra Pradesh High Court presided over by Justice V. Ramasubramanian (as his Lordship then was) in *M/s Concern Readymix, rep. By its Proprietor* (7 Supra).

(86) The Division Bench in *M/s Concern Readymix, rep. By its Proprietor* (7 Supra) observed that the first distinction between un-amended Section 13(8) and amended Section 13(8) made through Act 44 of 2016 is that before amendment, the facility of repayment of the entire dues along with costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction was that the un-amended Section 13(8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease, *but after the issue of notice*. But the amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, *before* the payment was made. The Division Bench held that *except these two*

distinctions, there is no other distinction.

(87) After referring to the corresponding amendments made under Rule 9 (1) of the Security Interest (Enforcement) Rules, 2002 w.e.f. 04.11.2016, the Division Bench in *M/s Concern Readymix, rep. By its Proprietor* (7 Supra) 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 Kumar, (2014) 5 SCC 610*, 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.”

(emphasis supplied)

(88) We have been informed that the decision in *M/s Concern Readymix, rep. By its Proprietor* (7 Supra) was challenged in the Supreme Court by the Corporation Bank, and vide order dt. 26.08.2019 in Diary No.28967 of 2019, the same was dismissed.

(89) The view taken by the High Court for the State of Telangana and Andhra Pradesh in *M/s Concern Ready Mix* (7 Supra) commends itself to us and we accept and approve the same.

(90) We shall now consider the judgment of Supreme Court in *Shakeena and another* (8 supra) cited by the counsel for 1st respondent. In that case, sale certificate had been issued in favour of the auction purchasers on 06.01.2006 and a Writ Petition was filed on 19.01.2006 challenging the auction and it was registered on 18.9.2007. The Court held that the appellants had failed to make a valid tender of amounts due or exercise their right of redemption in a manner known to law until the registration of the sale certificate on 18.09.2007 and that the right of redemption stood obliterated on 18.09.2007. The statement therein in para 29 that as per the amended provision stringent conditions have been stipulated that the tender of dues to the secured creditor shall be at any time before the date of publication of notice for public auction does not, in our opinion, lead to an expression of opinion by the Supreme Court that the law of redemption as per Section 60 of the Transfer of Property Act would not apply in view of amendment to Section 13 (8). We do not find any discussion in the decision in *Shakeena and another* (8 supra) about the decisions of the apex court dealing with the right of redemption under Sec.60 of the Transfer of Property Act, 1872. So reliance on the said decision does not help the 1st respondent.

(91) Though counsel for respondent No.1 cited certain decisions dealing with the principle that the general law will stand superseded by a special law : *Solidaire India Ltd. versus Fairgrowth Financial Services Ltd*⁹, *Jasbir Singh versus Vipin Kumar Jaggi*¹⁰, and *Pharmacy Council of India versus Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others*¹¹, in our considered opinion, the said decisions have no application because of the reasons given by us above. Had this principle applied, the Supreme Court would not have held in **Mathew Varghese** (6 Supra) that right of redemption continues till conveyance is executed, and not just upto the date fixed for sale even though Sec.13(8) (unamended) says so.

(92) Keeping in mind (i) the Report of the Joint Committee on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 discussed above, (ii) the law laid down by the Supreme Court in *Mathew Varghese* (6 supra) and (iii) the decision in *M/s Concern Readymix* (7 supra) of the Telangana and Andhra Pradesh High Court, with which we respectfully agree, we hold that the amended Section 13(8) of the SARFAESI Act merely prohibits a secured creditor from proceeding further with the transfer of the secured asset 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 amount mentioned in Section 13(8) of the SARFAESI Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted. We also hold that such a right would continue till the execution of a conveyance i.e. issuance of sale certificate in favour of the mortgagee. A similar view has been taken by this Bench in *M/s Hoshiarpur Roller Flour Mill Private Limited and another versus Punjab National Bank* CWP No.14440 of 2021, decided on 10.12.2021.

(93) It would, therefore, certainly be available to the petitioners herein before the issuance of sale certificate in favour of respondents No.2 and 3. Point (a) is answered accordingly in favor of the petitioners and against the respondents.

⁹ (2001) 3 SCC 71

¹⁰ (2001) 8 SCC 289

¹¹ AIR 2021 SC 843

POINTS (b) and (c)

(94) Now we shall consider the points (b) and (c) which are as under:

“(b) Whether the petitioners are entitled to any relief?”

(c) If so, to what relief?”

(95) We shall first deal with the objection raised by the 1st respondent- Bank about the maintainability of the Writ Petition itself.

(96) No doubt, in the decision of the Supreme Court reported in *Authorized Officer, State Bank of Travancore and another versus Mathew K.C.*¹², a view was taken that a Writ Petition ought not to be entertained since the SARFAESI Act is a complete Code by itself providing for expeditious recovery of dues arising out of loans granted by financial institutions, and the remedy of appeal is provided to the aggrieved person under Section 17 of the Act before the Debts Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18 of the Act. The said principle was also followed in *Authorized Officer, Punjab National Bank versus M/s KUT Private Energy*, decided by the Supreme Court on 04.05.2018.

(97) The instant Writ Petition had been filed on 27.02.2019, and after grant of interim order on 12.04.2019, it has been pending till date, i.e. for more than 34 months. To relegate the petitioners to the remedy provided under Section 17 of the SARFAESI Act at this point of time, in our opinion, would not be appropriate and would be a travesty of justice. It is also not in dispute that at this point of time there are no Presiding Officers posted in the Debts Recovery Tribunal at Chandigarh and it is not known when the said Presiding Officers would be appointed and will start functioning. Also, an important issue relating to the time upto which the right of redemption can be exercised by a mortgagor/borrower in spite of amendment made to Section 13(8) of the SARFAESI Act has been raised by the petitioners in this Writ Petition. Therefore, this plea of the respondents that the Writ Petition should be dismissed as not maintainable, is rejected.

(98) According to the notice dt.23.11.2017 issued by the 1st respondent- Bank to the petitioners, a sum of Rs.2,62,98,047.72 was due as on 22.11.2017 by the petitioners in the loan account of the first

¹² (2018) 3 SCC 85

petitioner.

(99) In July 2018, petitioners had paid Rs.30 Lacs to the 1st respondent-Bank. Thereafter, two demand drafts of Rs.25 Lacs each dt.25.02.2019 were also handed over to the counsel for the 1st respondent-Bank during the course of hearing in CWP No.565 of 2019.

(100) Thus, by the date of filing of CWP No.6402 of 2019 on 27.02.2019, the petitioners had paid Rs.80 Lacs.

(101) The petitioners had informed the Tehsildar, Faridabad on 14.02.2019, at the time of taking possession of their residential house that they would pay the whole amount of dues within 90 days. They had also filed an affidavit in CWP No.565 of 2019 that they would deposit a further sum of Rs.70 Lacs within one month from 15.02.2019 i.e. by 15.3.2019.

(102) Though a demand draft for the said amount of Rs.70 Lacs appears to have been taken on 15.04.2019 (copy is filed as Annexure-A.4 in CM No.3368-CWP of 2020), there was delay of 1 month as undertaken by them before this Court on 15.02.2019 and so the 1st respondent did not accept it. But the intention of the petitioners to clear the loan dues of the 1st respondent-Bank is evident.

(103) On 29.03.2019, the petitioners deposited Rs.1.75 Crore (Annexure-P.10) in the no lien account of one Mr. Shirish Goel and requested the 1st respondent Bank on 29.3.2019 for settlement of their loan account and hand over possession of their residential property vide email dt. 29.03.2019 (Annexure-P.9). According to the counsel for petitioners, they had to do this because the 1st respondent-Bank refused to open a no lien account for deposit of the said amount. Even on 12.4.2019, through email a similar request was made by the 2nd petitioner to the 1st respondent Bank.

(104) To the email dt.29.03.2019 of the 2nd petitioner, two letters bearing the same date 29.03.2019 were sent by the 1st respondent-Bank – one letter mentioning about the dues in the loan account of the 1st petitioner and also 2 other loan accounts without reference to the email dt.29.03.2019 of the petitioners, and another letter referring to the email dt.29.03.2019 of the petitioners but merely mentioning about the dues of the 1st petitioner of Rs.2,28,81,882.00 and informing about receiving a bid for Rs.3,12,00,000/- in the public auction held on 28.03.2019. The latter letter made no reference to the proposal of the petitioners regarding the deposit of Rs.1.75 Crore on 29.03.2019 in the no lien account of Mr. Shirish Goel and what objection it had to receive the

same.

(105) It is now contended by the counsel for the 1st respondent-Bank that deposit in the account of Mr. Shirish Goel is not a valid tender to the 1st respondent-Bank of the said amount and the petitioners should have enclosed a mandate of the said person to settle the loan dues of the 1st petitioner with the amount so deposited. But the silence of the 1st respondent in regard to the said deposit totally is un-understandable. It should have told the petitioners of this, and awaited their further action.

(106) If its dues as per the letter dt.29.03.2019 for the 1st petitioner's loan was only Rs.2,28,81,882.00 and petitioners had already paid Rs.80 Lacs and were offering Rs.1.7 Crore for settlement, the total amount being offered was more than Rs.2.5 Crore, much more than the loan due, and the 1st respondent could have accepted it.

(107) Since there was no response by the 1st respondent-Bank, petitioners contend that the said amount was taken out of the account of Mr. Shirish Goel on 24.04.2019 as the said deposit was not earning any interest.

(108) But the 1st respondent points out to this withdrawal of amount of Rs.1.7 Crore as a ground to deny any relief to the petitioners. According to it this was done two days after the instant WP was heard on 22.4.2019 and the interim order granted on 12.4.2019 was directed to continue.

(109) We find no force in the above contention of the counsel for 1st respondent. When the 1st respondent Bank maintains a stoic silence and gives no response to the said deposit of Rs.1.7 Crore and the request of the petitioners to settle the loan from 29.03.2019 till 22.04.2019, since the whole purpose of making the deposit was rendered futile, no exception can be taken to the withdrawal of the said amount.

(110) The counsel for the 1st respondent-Bank contends that even on 29.01.2020, the petitioners acted as if such deposit was subsisting and available for adjustment and refers to the order dt.29.01.2020 to buttress this argument and contends that the petitioners misled the Court by their conduct.

(111) The said order dt.29.01.2020 records "Learned counsel for the petitioners submits that a sum of Rs.1.7 Crore was *deposited with respondent- Bank.*" Thus, the order only indicates that such deposit

had been made in the past by the petitioners and there is nothing to show that the petitioners misled the Court saying that such a deposit is still available with the 1st respondent-Bank.

(112) Another fact that was highlighted by the counsel for the petitioners was that this Writ Petition had been adjourned to 22.04.2019 to be heard along with CWP No.565 of 2019, but the petitioners' counsel filed CM No.5896-CWP of 2019 on 12.04.2019, took a mentioning slip, got it listed and obtained orders on 12.04.2019 by the Division Bench of this Court that the sale, whose confirmation was scheduled for that day, shall not be confirmed. According to the counsel for the 1st respondent-Bank, the said application had not been served on him, and this conduct of the petitioners also disentitles them to any relief.

(113) The non service of the CM 5896 of 2019 on counsel for the 1st respondent Bank was disputed by counsel for petitioners.

(114) Copy of the CM No.5896-CWP of 2019 filed in the Court indicates that copy was served on one Balwinder Singh, c/o Sri I.P. Singh, counsel for the 1st respondent on 12.4.2019 itself. According to counsel for petitioners the said Balwinder Singh is the Clerk of Sri I.P. Singh.

(115) We therefore do not accept the plea of the 1st respondent that the CM No.5896-CWP of 2019 was moved without his knowledge and behind his back the interim order was obtained on 12.4.2019.

(116) The reason why the application CM.No.5896-CWP of 2019 was moved on 12.4.2019 by petitioners was that the auction sale in favour of the respondents No.2 and 3, conducted after filing of this Writ Petition, was to be confirmed on that very day i.e., 12.04.2019 and a specific plea was raised therein that the right of redemption of the petitioners had been exercised even at the time of taking physical possession on 14.2.2019 of their residential house much before the sale notice was issued on 22.02.2019, and it can still exercise it.

(117) It is not in dispute that the short summer break of 10 days was to commence the next day i.e. from 13.04.2019 and there was every possibility of the right of redemption getting extinguished by issuance of certificate of sale in the interregnum period.

(118) Since the file of the case would have been before the Court on 12.04.2019, and the Court would have noticed that the 1st respondent-Bank was already represented by a counsel Sri I.P. Singh

and he had taken notice previously on 18.3.2019 and copy of CM No.5896-CWP of 2019 was also served on 12.4.2019 on his Clerk, and since Sri I.P. Singh, counsel for the 1st respondent was not present, the Bench issued notice of the application on 12.4.2019 and then proceeded to pass the order directing the 1st respondent not to confirm the sale, to protect the rights of the petitioners and to ensure that the Writ Petition does not become infructuous when the Court next takes up the matter on 22.04.2019.

(119) In any event, admittedly, till today the said order dt.12.04.2019 has been in vogue, and has not been vacated.

(120) Therefore, we do not see much force in this contention.

(121) Likewise the failure of the petitioners to deposit the entire dues at a prior point of time either within 90 days of the filing of the affidavit on 15.02.2019 or before 15.04.2019 also cannot extinguish their right of redemption because as held in *M/s L.K. Trust* (4 Supra) there is no equity or right in property created in favor of the purchaser by the contract between the mortgagee – 1st respondent Bank and the proposed purchasers- respondents 2 and 3; *only on execution of conveyance, ownership passes from one party to another; the petitioners/mortgagors cannot be held to have lost their right of redemption just because the property was put to auction; and a mortgage being a security for the debt, the right of redemption continues although the mortgagors fail to pay the debt at the due date.*

(122) The counsel for the petitioners contended that since the sale certificate has not been issued to the respondents No.2 and 3 till date, the petitioners are willing to clear the entire dues of the 1st respondent-Bank within a reasonable time and exercise their right of redemption which is still subsisting.

(123) The decision in *Shakeena* – (8 supra) relied on by the 1st respondent-Bank is distinguishable because (a) in that case, unlike in the instant case, it was observed in para 28 that the borrower took no steps whatsoever to pay the outstanding dues to the respondent-Bank by way of a valid tender *after filing of the Writ Petition*, and (b) also because the Writ Petition itself was filed on 19.01.2006 in *Shakeena* *after the sale certificate was issued on 06.01.2006*, and as per the settled law, once such sale certificate was issued, the right of redemption was lost.

(124) In contrast, Rs.50 Lacs was paid by the petitioners to the 1st respondent-Bank on 22.02.2019 in addition to Rs.30 Lacs paid in

July 2018, and a demand draft of Rs.70 Lacs was taken on 15.04.2019 for payment, but since it was being offered one month late, and not within one month from the date of the undertaking given on 15.02.2019 in CWP No.565 of 2019, it was not received by the 1st respondent-Bank. This conduct indicates that the petitioners were always keen to settle their dues and had made substantial payment and took steps to make more payment.

(125) Also it was the petitioners' contention that they had arranged Rs.1.7 Crore to be deposited in a no lien account in the name of Mr. Shirish Goel since the Bank had refused to open a no lien account at their instance and had informed the Bank of the same on 29.03.2019 along with a request for settlement by email dt.29.03.2019, but the Bank chose to remain silent on that offer and now a technical plea of it not being a valid tender is sought to be raised by the Bank.

(126) Had the Bank responded positively to the email dt.29.03.2019 and insisted on receiving the said payment immediately, and the petitioners had obliged, no third party interest would have been created because by then the respondents No.2 and 3 had not deposited 75% of the balance consideration out of Rs.3,12,00,000/- quoted by them. But if the petitioners had not obliged and made the payment of Rs.1.7 Crore to clear their loan dues after the Bank had insisted on such payment, then nothing prevented the Bank from proceeding to accept the bid of respondents No.2 and 3 and confirming the sale. In the latter case, this Court would not have shown any indulgence to the petitioners.

(127) It is true that the auction purchasers had deposited by 01.06.2019 the bid amount of Rs.3,12,00,000/-, but they have been clearly informed by the 1st respondent-Bank through letter dt.29.03.2019 that the sale in their favour is subject to the outcome of the Writ Petition. So they cannot claim any prejudice.

(128) The counsel for the auction purchasers-respondents 2 and 3 contended that that no one shall suffer by an act of the Court and cited the decision in *South Eastern Coalfields Ltd. versus State of M.P. and others*¹³. While we agree that such is the principle, the same cannot apply in the facts in the circumstances of the case and the respondents 2 and 3 cannot contend that entertaining the Writ Petition or granting the interim order on 12.04.2019 are mistakes committed by this Court, and merely because they had deposited Rs.3.12 Crore, they suffered some

¹³ (2003) 8 SCC 648

prejudice which puts them on a higher pedestal.

(129) In our opinion, interests of justice will be served if they are compensated by refund of the amount deposited by them with the 1st respondent with a reasonable rate of interest.

(130) We remind ourselves of the pertinent observation of the Supreme Court in *Mathew Varghese* (6 Supra) in para 41 at pg.639 as under:

“... we wish to state that the endeavor or the role of a secured creditor in such a situation while resorting to any sale for the realization 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.”
(emphasis supplied)

(131) In the instant case since the right of redemption of the petitioners has not got extinguished till date because of non-confirmation of sale and non-issuance of sale certificate to the respondents 2 and 3, and since the petitioners have made substantial payments amounting to Rs.80 Lacs out of the total dues of Rs.2,28,81,882.00 as on 29.03.2019, and have shown a bona fide intention to pay the rest of the dues within a short time, we are inclined to grant relief in the Writ Petition to the petitioners subject to what is mentioned below.

(132) Accordingly, Points-(b) and (c) are answered as under:-

- (i) The Writ Petition is allowed;
- (ii) Subject to the petitioners paying the entire balance outstanding dues with applicable interest to the 1st respondent-Bank within four weeks from today, the 1st respondent-Bank shall close the loan account of the petitioners and restore possession of their residential property to them; No costs.
- (iii) If not, this Writ Petition shall stand dismissed with costs of Rs.25,000/- without reference to this Court;
- (iv) In the event the petitioners comply with Clause (ii) above, the amount deposited by the respondents No.2 and 3 with the 1st respondent-Bank be refunded to them with

interest rate @7% per annum from the respective dates of deposit till date of refund; and such refund shall be made within one week of the petitioners' complying with Clause (ii) above.

Shubreet Kaur