

A J. RAJIV SUBRAMANIYAN & ANR.

v.

M/S. PANDIYAS & ORS
(Civil Appeal No. 3865 of 2014)

MARCH 14, 2014

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[SURINDER SINGH NIJJAR AND A.K. SIKRI, JJ.]

C *SECURITISATION AND RECONSTRUCTION OF
FINANCIAL ASSETS AND ENFORCEMENT OF
SECURITY INTEREST ACT, 2002:*

D *s.13(8) - Right of borrower - Held: The provision
contained in s.13(8) is specifically for the protection of the
borrowers in as much as, ownership of the secured assets is
a constitutional right vested in the borrowers and protected u/
Article 300A of the Constitution - Therefore, the secured
creditor as a trustee of the secured asset cannot deal with the
same in any manner it likes and such an asset can be
disposed of only in the manner prescribed in the SARFAESI
Act - Therefore, the creditor should ensure that the borrower
was clearly put on notice of the date and time by which either
the sale or transfer will be effected in order to provide the
required opportunity to the borrower to take all possible steps
for retrieving his property - Such a notice is also necessary
to ensure that the process of sale will ensure that the secured
assets will be sold to provide maximum benefit to the
borrowers - The notice is also necessary to provide the
required opportunity to the borrower to take all possible steps
for retrieving his property or at least ensure that in the process
of sale the secured asset derives the maximum benefit and
the secured creditor or anyone on its behalf is not allowed to
exploit the situation of the borrower by virtue of the
proceedings initiated under the SARFAESI Act - Constitution
of India, 1950 - Article 300A.*

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J. RAJIV SUBRAMANIYAN & ANR. v. PANDIYAS & 1141
ORS.

s.13 - Sale of Non performing asset - Sale consideration only Rs.10,000 above the reserve price whereas property worth much more - Held: The secured creditors are expected to take bonafide measures to ensure that there is maximum yield from such secured assets for the borrowers - Sale null and void being in violation of provisions of s.13 and rr.8 and 9 and liable to be set aside - Security Interest (Enforcement) Rules, 2002 - rr.8 and 9. A B

s.13 - Sale of Non performing asset - Single judge of the High Court after holding that the sale was invalid as there was violation of rules, directed making of payments by borrowers to the Bank with clear direction that on such payment, insofar as the bank is concerned its dues would be settled - Not only borrowers made the payment as directed which was accepted by bank, the Bank even accepted the said judgment and did not file any appeal thereagainst - Only the buyer filed the appeal - In the facts of the case, once the payment is made to the buyer by borrowers the possession of the property shall be delivered to the borrowers with no further liability towards the bank. C D

SECURITY INTEREST (ENFORCEMENT) RULES, 2002: E

rr.8 and 9 - Held: Any sale effected without complying with the rules would be unconstitutional and null and void. F

r.8(8) - Sale by any method other than public auction or public tender shall be on such terms as may be settled between the parties in writing - In the instant case, no terms were settled between the parties that the sale can be effected by Private Treaty - The Borrowers were not even called to the joint meeting between the Bank and the Sale Agent - There was violation of rules rendering the sale void. G

Respondent no.1 and 2 had taken various loans from respondent no.3-Bank. Upon failure of respondent no.1 H

A and 2 to repay the loan, their assets mortgaged with
 respondent no.3-Bank were classified as Non-Performing
 Assets. Respondent no.3-Bank issued a demand notice
 and then a possession notice under the SARFAESI Act.
 Respondent no.1 and 2 challenged the two notices
 B before the High Court. Meanwhile, auction sale was fixed
 but no sale took place as there were no bidders.
 Respondent no.1 and 2 sought cancellation of auction
 notice and sought permission of respondent no.3-Bank
 to sell the secured assets by private treaty. The
 C outstanding balance to the bank was Rs.1.57 crores.

Respondent Nos.1 and 2 made a payment of Rs.42
 lacs to respondent no.3-Bank, by selling machinery with
 the permission of respondent no.3-Bank. A request was
 also made for an extension of two months for paying the
 D remaining amount after selling the secured assets.
 Respondent no.3-Bank gave approval for private sale of
 the immovable property and the secured assets were sold
 in favour of the appellant for a consideration of 123.10
 lacs. The sale was affected through Ge-Winn
 E Management Company, Resolution Agents.

The reserve price of the secured assets was fixed at
 123 lacs. Sale deed was executed in favour of the
 appellants by respondent No.3 on 20th December, 2006,
 F as the entire consideration was paid on 15th December,
 2006. On 21st December, 2006, respondent Nos.1 and 2
 were informed by respondent No.3-Bank that the
 secured assets had been sold for more than the amount
 offered by them. Respondent Nos.1 and 2 filed writ
 G petition without disclosing that the earlier writ petition
 challenging the auction notice had been withdrawn
 without the court giving liberty to respondent Nos. 1 and
 2 to file a fresh writ petition.

H The single judge of the High Court allowed the writ
 petitions. The sale in favour of the appellant was held to

be vitiated on the ground that respondent No.3-Bank failed to follow the mandatory provisions of Rules 8(5), 8(6) and 9(2) of the Security Interest (Enforcement) Rules, 2002. But a direction was issued to refund the amount paid by the petitioner i.e. Rs.1crore 41 lacs with interest at 9% per annum from April, 2007. The Division Bench of the High Court upheld the order of the single judge. The instant appeals were filed challenging the order of the High Court.

Disposing of the appeals, the Court

HELD: 1. The findings recorded by the High Court that there has been a violation of Security Interest (Enforcement) Rules, 2002 were perfectly justified. The provision contained in Section 13(8) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers in as much as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under Article 300A of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset can not deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in the SARFAESI Act, 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or any one on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the SARFAESI Act, 2002. In view of Rules 8 and 9(1), any sale effected without complying with the same would be unconstitutional and, therefore, null and

A void. In the present case, there is an additional reason for
 declaring that sale in favour of the appellant was a nullity.
 Rule 8(8) states that sale by any method other than public
 auction or public tender, shall be on such terms as may
 be settled between the parties in writing. There were no
 B terms settled in writing between the parties that the sale
 can be affected by Private Treaty. In fact, the borrowers -
 respondent Nos. 1 and 2 were not even called to the joint
 meeting between the Bank - Respondent No.3 and Ge-
 Winn held on 8th December, 2006. Therefore, there was
 C a clear violation of the aforesaid Rules rendering the sale
 illegal. Generally proceedings under the SARFAESI Act,
 2002 against the borrowers are initiated only when the
 borrower is in dire-straits. The provisions of the
 SARFAESI Act, 2002 and the Rules, 2002 have been
 D enacted to ensure that the secured asset is not sold for
 a song. It is expected that all the banks and financial
 institutions which resort to the extreme measures under
 the SARFAESI Act, 2002 for sale of the secured assets to
 ensure, that such sale of the asset provides maximum
 benefit to the borrower by the sale of such asset.
 E Therefore, the secured creditors are expected to take
 bonafide measures to ensure that there is maximum yield
 from such secured assets for the borrowers. In the
 present case, sale consideration is only Rs.10,000/- over
 the reserve price whereas the property was worth much
 F more. The sale is null and void being in violation of the
 provision of Section 13 of the SARFAESI Act, 2002 and
 Rules 8 and 9 of the Rules, 2002. The sale effected in
 favour of the appellants on 18th December, 2006 is liable
 to be set aside. [paras 11, 13 to 18] [1150-E; 1151-D-G;
 G 1152-B-H; 1153-A-C]

Mathew Varghese vs. M.Amritha Kumar & Ors. 2014 (2)
 Scale 331 - relied on.

H 2. The borrowers -Respondent No.1 and 2 had
 evaluated the property at Rs.117 lakhs which was

acknowledged in their letter dated 28th August, 2006. Therefore, the reserve price was fixed based upon the said figures. The appellants bought the property for more than the reserve price. The appellants paid the entire consideration within three days of the sale, i.e., on 15th December, 2006. The Sale Deed was executed in their favour on 20th December, 2006. Possession was admittedly delivered on 20th December, 2006 also. The appellants have also incurred substantial loss as they have been unnecessarily dragged into litigation. [Para 21] [1153-G-H; 1154-B]

3. The single judge of the High Court after holding that the sale in question was invalid, directed making of payments by respondent Nos. 1 and 2 to respondent No.3 bank with clear direction that on such payment, insofar as the bank is concerned its dues shall stand settled. Not only respondent Nos. 1 and 2 made the payment as directed which was accepted by respondent No.3 bank, insofar as respondent No.3 bank is concerned it even accepted the said judgment and did not file any appeal thereagainst. Only the appellant filed the appeal. Though the order of the Single Judge about the validity of the sale had been affirmed, the Division Bench interfered with the other direction of the Single Judge which should not have been done as bank had not challenged the order of the Single Judge. In the facts of this case, once the payment is made to the appellant by respondent Nos.1 and 2, the possession of the property shall be delivered to the respondent Nos.1 and 2 with no further liability towards the bank. [para 27] [1155-G-H; 1156-A-C]

4. The sale in favour of the appellants and the subsequent delivery of possession to the appellants is *null and void*. The sale is accordingly set aside. The appellants are directed to deliver the possession of the property purchased by them under the Sale Deed dated to Respondent Nos. 1 and 2 immediately upon receiving

A the entire amount; Respondent No.3 directed to refund
the entire proceeds of the FDR in which the sale
consideration was deposited together with accrued
interest forthwith. Respondent Nos. 1 and 2 will ensure
that the entire amount due to the appellants is paid on
B or before 15th June, 2014. Upon receipt of the entire
amount, the possession shall be delivered to
Respondent Nos. 1 and 2. [Para 28] [1156-D-G]

United Bank of India vs. Satyawati Tondon & Ors. 2010
C (8) SCC 110: 2010 (9) SCR 1 - referred to.

Case Law Reference:

2010 (9) SCR 1 referred to Para 4

2014 (2) Scale 331 relied on Para 12

D CIVIL APPELLATE JURISDICTION : Civil Appeal No.
3865 of 2014.

From the Judgment and Order dated 14.06.2011 of the
High Court of Madras at Madurai at W.A. No. 417 of 2011.

E WITH
Civil Appeal No. 3866 of 2014.

F Ashok Desai, Dhruv Mehta, Vikas Singh, T. Harish Kumar,
Y. Prakash, T.K. Dharmarajan, N. Shoba, Sri Ram J.
Thalapathy, V. Adihmoolam, Sanjay Kapur, Priyanka Das,
Lekha Vishwanath, Anmol Chandan for the appearing parties.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. Leave granted.

G 2. These special leave petitions are directed against the
final judgment and order dated 14th June, 2011 passed by the
Madras High Court (Madurai Bench) in W.A.No.417 of 2011
dismissing the aforesaid Writ Appeal filed by the appellants.

H 3. We have heard the learned counsel for the parties at
length.

4. Mr. Ashok Desai learned senior counsel appearing on behalf of the appellants has submitted that although many issues have been raised in the SLP, he is not pressing the point that the High Court erred in entertaining the writ petition filed by respondent Nos.1 and 2. The point with regard to the maintainability of the writ petition was taken on the basis of a judgment of this Court in the case of *United Bank of India vs. Satyawati Tondon & Ors.*¹. It was urged before the High Court that an alternative remedy being available to respondent Nos.1 and 2 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act, 2002), the writ petition would not be maintainable. The second issue with regard to the maintainability was based on the fact that earlier respondent Nos. 1 and 2 had filed Writ Petition Nos.5027-28 of 2006 challenging the auction sale notice dated 23rd May, 2006. However, these writ petitions were withdrawn on 3rd July, 2006. The High Court did not give any liberty to respondent Nos. 1 and 2 to file fresh writ petition. Mr. Desai very fairly submitted that it is not necessary to examine the issues on maintainability of the writ petition, as the entire issue is before this Court on merits.

5. Mr. Ashok Desai has pointed out that respondent Nos.1 and 2 had taken various loans from respondent No.3-Bank. Upon failure of Respondent Nos. 1 and 2 to repay the loan, the assets of respondent Nos.1 and 2 which had been mortgaged with respondent No.3-Bank were classified as non-performing assets (NPA). In spite of such action having been taken by respondent No.3-Bank, respondent Nos.1 and 2 failed to regularize the bank account. Therefore, on 8th June, 2005, the bank-respondent No.3 issued notice under Section 13(2) of the SARFAESI Act, 2002 followed by a possession notice on 12th January, 2006 under Section 13(4) of the said Act. Respondent Nos.1 and 2 challenged the aforesaid two notices by filing Writ Petition Nos. 4174/2006, 4175/2006, 5027/2006 and 5028/

1. 2010 (8) SCC 110.

A 2006. In the meantime, auction sale was fixed on 7th July, 2006. But no sale took place as there were no bidders. On 28th August, 2006, respondent Nos. 1 and 2 sought cancellation of the auction notice and sought permission of respondent No.3-Bank to sell the secured assets by private Treaty. It was stated
 B that as on that date the outstanding balance due to the bank was a sum of Rs.1.57 crores. A request was made to break up the aforesaid amount as follows :

- (a) Machineries of M/s. Suruthi Fabrics - 0.40 lacs
- C (b) Land and building of M/s. Suruthi Fabrics - 0.70 lacs
- (c) Pandias Garment Factory land and Building - 0.47 lacs
 And Suruthi Fabrics 5.51 acres Land

6. Permission was sought to sell the assets as stated
 D above within six months. On 11th September, 2006, respondent Nos.1 and 2 made a payment of Rs.42 lacs to respondent No.3-Bank, by selling machinery with the permission of respondent No.3-Bank. A request was also made for an extension of two moths for paying the remaining amount
 E after selling the secured assets. On 8th December, 2006, respondent No.3-Bank gave approval for private sale of the immovable property to the appellants and for issue of sale certificate. On the very same date, the secured assets were
 F sold in favour of the petitioner for a consideration of 123.10 lacs. It is not disputed by Mr. Vikas Singh, learned senior counsel appearing for Respondent No.3, that the sale was affected through Ge-Winn Management Company, Resolution Agents. This is also evident from the proceedings of the meeting held between respondent No.3-Bank and Ge-Winn on
 G 8th December, 2006.

7. We may point out here that the reserve price of the secured assets was fixed at 123 lacs. Sale deed was executed in favour of the appellants by respondent No.3 on 20th December, 2006, as the entire considerations have been paid
 H on 15th December, 2006. On 21st December, 2006,

respondent Nos.1 and 2 were informed by respondent No.3-Bank that the secured assets had been sold for more than the amount offered by them in the letter dated 28th August, 2006. At that stage, respondent Nos.1 and 2 filed Writ Petition No.325 of 2007 without disclosing that the earlier Writ Petition Nos.5027-28/2006 challenging the auction notice dated 23rd May, 2006 had been withdrawn without the court giving liberty to respondent Nos. 1 and 2 to file a fresh writ petition.

8. Upon completion of the proceedings inspite of the preliminary objections taken by the appellants, the learned Single Judge allowed the writ petitions. The sale in favour of the petitioner was held to be vitiated on the ground that respondent No.3-Bank failed to follow the mandatory provisions of Rules 8(5), 8(6) and 9(2) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rules, 2002'). But a direction was issued to refund the amount paid by the petitioner i.e. Rs.1crore 41 lacs with interest at 9% per annum from April, 2007.

9. Aggrieved by the aforesaid order, the appellants filed Writ Appeal No.4127/2011 in the High Court, which has also been dismissed.

10. Mr. Ashok Desai submits that the petitioner is a bona fide purchaser and has paid the full consideration. Sale deed has been duly executed. Possession of the property is with the appellants since 2006. Therefore, respondent Nos.1 and 2 should not be permitted at this stage to claim that the sale is vitiated on the ground that it has been affected through an agent of respondent No.3-Bank, namely, Ge-Winn. Mr. Desai submitted that the Single Judge as well as the Division Bench have wrongly held that there has been violation of Rules 8(5), 8(6), 8(8) and 9(2) of the Rules, 2002. Mr. Desai further submitted that it would be equitable to permit the petitioner to keep the plot which is adjacent to the property of the petitioner. Respondent Nos.1 and 2 can be permitted to take the other plots.

A 11. Mr. Dhruv Mehta, learned senior counsel appearing on
 behalf of the respondent Nos. 1 and 2 relying on the judgment
 of this Court in *Mathew Varghese Vs. M.Amritha Kumar & Ors.*
 in C.A.No.1927-1929 of 2014 decided on 10th February, 2014
 submits that the Rules, 2002 are mandatory in nature. In the
 B present case, the sale has been effected in violation of the
 aforesaid rules. Both the learned Single Judge as well as the
 Division Bench have come to the conclusion that the provisions
 of the aforesaid rules have not been followed. It is not disputed
 by any of the parties that there is no agreement between
 C respondent Nos. 1 and 2 and respondent No.3-Bank, in writing,
 to affect the sale by Private Treaty. Mr. Vikas Singh, learned
 senior counsel appearing for respondent No.3-Bank, however,
 pointed out that the respondent Nos.1 and 2 had filed a review
 petition in which it was averred that they may be permitted to
 D sell the secured assets by Private Treaty. Therefore, according
 to Mr. Vikas Singh, respondent Nos. 1 and 2 cannot now be
 heard to say that they had not given their consent to affect the
 sale by Private Treaty. We are unable to accept the submission
 made by Mr. Vikas Singh that there is no violation of the Rules,
 2002. In our opinion, the findings recorded by the learned Single
 E Judge as well as the Division Bench of the High Court that there
 has been a violation of Rules, 2002 are perfectly justified.

12. This Court in the case of *Mathew Varghese Vs.*
*M.Amritha Kumar & Ors.*² examined the procedure required
 to be followed by the banks or other financial institutions when
 F the secured assets of the borrowers are sought to be sold for
 settlement of the dues of the banks/financial institutions. The
 Court examined in detail the provisions of the SARFAESI Act,
 2002. The Court also examined the detailed procedure to be
 followed by the bank/financial institutions under the Rules, 2002.
 G This Court took notice of Rule 8, which relates to Sale of
 immovable secured assets and Rule 9 which relates to time of
 sale, issue of sale certificate and delivery of possession etc.
 With regard to Section 13(1), this Court observed that Section
13(1) of SARFAESI Act, 2002 gives a free hand to the secured

H 2. 2014 (2) Scale 331.

creditor, for the purpose of enforcing the secured interest without the intervention of Court or Tribunal. But such enforcement should be strictly in conformity with the provisions of the SARFAESI Act, 2002. Thereafter, it is observed as follows:-

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

13. This Court further observed that the provision contained in Section 13(8) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers in as much as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under Article 300A of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset can not deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in the SARFAESI Act, 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or any one on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the SARFAESI Act, 2002. Thereafter, in Paragraph 27, this Court observed as follows:-

"27. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a SECURED ASSET, cannot take place without duly informing the borrower of the time

A and date of such sale or transfer in order to enable the
 borrower to tender the dues of the SECURED CREDITOR
 with all costs, charges and expenses and any such sale
 or transfer effected without complying with the said
 statutory requirement would be a constitutional violation
 B and nullify the ultimate sale."

14. As noticed above, this Court also examined Rules 8
 and 9 of the Rules, 2002. On a detailed analysis of Rules 8
 and 9(1), it has been held that any sale effected without
 complying with the same would be unconstitutional and,
 C therefore, null and void.

15. In the present case, there is an additional reason for
 declaring that sale in favour of the appellant was a nullity. Rule
 8(8) of the aforesaid Rules is as under:-

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

16. It is not disputed before us that there were no terms
 settled in writing between the parties that the sale can be
 E affected by Private Treaty. In fact, the borrowers - respondent
 Nos. 1 and 2 were not even called to the joint meeting between
 the Bank - Respondent No.3 and Ge-Winn held on 8th
 December, 2006. Therefore, there was a clear violation of the
 aforesaid Rules rendering the sale illegal.

F 17. It must be emphasized that generally proceedings
 under the SARFAESI Act, 2002 against the borrowers are
 initiated only when the borrower is in dire-straits. The provisions
 of the SARFAESI Act, 2002 and the Rules, 2002 have been
 enacted to ensure that the secured asset is not sold for a song.
 G It is expected that all the banks and financial institutions which
 resort to the extreme measures under the SARFAESI Act, 2002
 for sale of the secured assets to ensure, that such sale of the
 asset provides maximum benefit to the borrower by the sale
 of such asset. Therefore, the secured creditors are expected

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to take bonafide measures to ensure that there is maximum yield from such secured assets for the borrowers. In the present case, Mr. Dhruv Mehta has pointed out that sale consideration is only Rs.10,000/- over the reserve price whereas the property was worth much more. It is not necessary for us to go into this question as, in our opinion, the sale is null and void being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the Rules, 2002.

18. We, therefore, have no hesitation in upholding the judgments of the learned Single Judge and the Division Bench of the High Court to the effect that the sale effected in favour of the appellants on 18th December, 2006 is liable to be set aside.

19. This now brings us to moulding the relief in the peculiar facts and circumstances of this case.

20. As noticed earlier, Mr. Ashok Desai had emphasized on behalf of the appellants that no blame at all can be attributed to them. The bank had decided to sell the immovable properties to the appellants for Rs.1,23,10,000/- against the reserve price of Rs.1,23,00,000. This is evident from the joint meeting of the bank held with Ge-Winn on 10th December, 2006, wherein it is observed as follows:-

"Referring to the above in the presence of the undersigned it has been decided to effect the sale to M/s. Susee Automobiles Pvt. Ltd., Madurai and Smt. Nirmala Jeyablan, W/o Shri Jayabaaalan, No.4, S.V. Nagar, S.S. Colony, Madurai for a consideration of Rs.123.10 lakhs (Rupees one crore twenty three lakhs and ten thousand only) against the reserve price of Rs.123.00 lakhs and issue Sale Certificate for registration under private treaty."

21. Mr. Desai had also pointed out that the borrowers - Respondent No.1 and 2 had evaluated the property at Rs.117 lakhs. The evaluation was acknowledged by Respondent Nos. 1 and 2 in the letter dated 28th August, 2006. Therefore, the

A reserve price was fixed based upon the aforesaid figures. The appellants bought the property for more than the reserve price. The appellants paid the entire consideration within three days of the sale, i.e., on 15th December, 2006. The Sale Deed was executed in their favour on 20th December, 2006, Possession was admittedly delivered on 20th December, 2006 also. The appellants have also incurred substantial loss as they have been unnecessarily dragged into litigation. He pointed out that the appellants have in fact incurred losses of Rs.3 crores as they were deprived of using the property in view of the interim orders passed by the High Court and they were forced to take other property on monthly rent of Rs.3 lakhs from January 2007. He, therefore, submitted that the proposal made by the appellants for being permitted to keep the plot adjacent to the property already owned by them, be accepted. In the alternative, learned senior counsel submitted that the High Court has unnecessarily reduced the amount of interest on the amount deposited by the appellants with the bank would bear only 4% interest. He submitted that the appellants are entitled to 18% compound interest since the date the amount was deposited till refund.

E 22. On the other hand, Mr. Dhruv Mehta pointed out that property of Respondent No.1 has been sold for a ridiculously low price, as the bank is interested only in regularizing the account of the borrower. He has submitted that respondent Nos. 1 and 2 are prepared to compensate the appellants, to a reasonable extent, but not to the extent claimed by Mr. Desai.

G 23. On the other hand, Mr. Vikas Singh has submitted that in case the sale is to be set aside and the properties have to be returned to the borrowers, the dues of the bank also have to be secured, which are now in the region of Rs.4 crores.

24. We have considered the submissions made by the learned counsel for the parties.

H 25. Initially on our suggestion, respondent Nos. 1 and 2 had quantified the amount in accordance with the directions issued

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by the learned Single Judge. The learned Single Judge had ordered refund of Rs.1,41,00,000/-, (Representing Rs.1,23,10,000/- towards Sale Price and Rs.18,90,000/- towards Stamp Duty with interest @9% per annum from April 2007). However, since we had accepted the second alternative (partially) of Mr. Ashok Desai, the appellants and respondents have jointly submitted the following chart:-

Amount quantified by the Learned Single Judge	Interest@ 18% from April 2007 to 15.06.2014	Total
Rs. 1,41,00,000/- Rs. 1,23,10,000/- Sale Price Rs. 18,90,000/- (Stamp Duty)	Rs. 1,84,00,500/-	Rs. 3,25,00,500/-

26. Mr. Dhruv Mehta has stated that Respondent Nos. 1 and 2 are prepared to refund the sale amount paid by the appellants as Sale Price together with 18% simple interest from 1st July, 2007 till 15th June, 2014. The total amount spent on Stamp Duty shall also be refunded to the appellants. The total amount shall be paid to the appellants by 15th June, 2014. Mr. Desai had pointed out that the amount deposited with the bank, which is said to be lying in a FDR Bearing 8.25% per annum ought to be refunded by the bank to the appellants. Upon the entire amount being repaid to the appellants, the possession of the property purchased by the appellants will be delivered to the Respondent Nos.1 and 2.

27. Insofar as the submission of Mr. Vikas Singh learned senior counsel is concerned we are unable to accept the same in the facts and circumstances of this case. It would be relevant to point out that the learned Single Judge of the High Court after holding that the sale in question was invalid, directed making of payments by respondent Nos. 1 and 2 to respondent No.3 bank with clear direction that on such payment, insofar as the bank is concerned its dues shall stand settled. Not only

A respondent Nos. 1 and 2 made the payment as directed which was accepted by respondent No.3 bank, insofar as respondent No.3 bank is concerned it even accepted the said judgment and did not file any appeal thereagainst. Only the appellant filed the appeal. Though the order of the learned Single Judge about the validity of the sale had been affirmed, the Division Bench interfered with the other direction of the learned Single Judge which should not have been done as bank had not challenged the order of the learned Single Judge. We are, therefore, of the opinion that in the facts of this case, once the payment is made to the appellant by respondent Nos.1 and 2 in the manner stated hereinafter, the possession of the property shall be delivered to the respondent Nos.1 and 2 with no further liability towards the bank.

D 28. In view of the aforesaid, we hold that the sale in favour of the appellants dated 18th December, 2006 and the subsequent delivery of possession to the appellants is null and void. The sale is accordingly set aside. The appellants are directed to deliver the possession of the property purchased by them under the Sale Deed dated 20th December, 2006 to Respondent Nos. 1 and 2 immediately upon receiving the entire amount as directed hereunder:-

- (i) The State Bank of India - Respondent No.3 directed to refund the entire proceeds of the FDR in which the sale consideration was deposited together with accrued interest forthwith.
- (ii) The Respondent Nos. 1 and 2 will ensure that the entire amount due to the appellants is paid on or before 15th June, 2014.
- (iii) Upon receipt of the entire amount, the possession shall be delivered to Respondent Nos. 1 and 2.

29. With these observations, the appeals are disposed of with no order as to costs.

H D.G. Appeals disposed of.