Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 2545/2023
[ARISING OUT OF SLP(C) NO.14896/2018]

AUTHORISED OFFICER
STATE BANK OF INDIA ...APPELLANT

VERSUS

C. NATARAJAN & ANR. ...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

Leave granted.

2. The Authorized Officer (for brevity "the Authorized Officer", hereafter) of the State Bank of India, Stressed Asset Management Branch, Coimbatore, Tamil Nadu (for brevity "the Bank",

hereafter) has impugned the judgment and order dated 27th March, 2018 of the Madras High Court allowing a writ petition (W.P. No.4519 of 2018) instituted by the contesting respondent herein.

3. The facts leading to institution of the writ petition, as recorded in the impugned judgment and order, are noticed hereunder:

a. Default was committed by M/s Stallion Knitwear India Private Limited (for brevity "Stallion", hereafter) in discharging its debts to the Bank. Consequent upon classification of its account as non-performing asset, the Authorized Officer had taken possession of the secured asset (being the plant and machinery of Stallion) as a measure under section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act", hereafter). Thereafter, e-auction notice dated 22nd August, 2007 was issued by the Authorized Officer putting up the plant and

machinery of Stallion for sale. The contesting respondent had participated in the e-auction held on 15th September, 2017 by depositing requisite earnest money. Having quoted a sum of Rs. 1,23,00,000/-, which exceeded the reserve price by Rs. 1,00,000/-, he was declared the highest bidder. Inclusive of the earnest money deposit, the petitioner paid Rs. 30,75,000/- towards 25% of the sale price by RTGS on 15th September, 2017 itself, and was under advice to pay the balance 75% thereof, i.e., Rs. 92,25,000/-, on or before 29th September, 2017.

b. The contesting respondent failed to arrange requisite funds and by a request letter dated 27th September, 2017, sought for extension of time to pay the balance of amount within 25 days. Acceding to such request, the Authorized Officer, on the following day, extended the time for payment till 23rd October, 2017. Two weeks prior to the

extended last date for making payment of the balance amount, the contesting respondent received summons dated 10th October, 2017 from the Debt Recovery Tribunal, Coimbatore (for brevity “the DRT”, hereafter), intimating him that Stallion having filed an application under section 17 of the SARFAESI Act had applied for interim relief, which was set down for hearing on 6th November, 2017. Having learnt of pendency of proceedings before the DRT, the contesting respondent met the Authorized Officer who assured the contesting respondent of appropriate care to be taken to contest such proceedings. Hearing such assurance and while referring to the summons received from the DRT, the contesting respondent by his letter dated 20th October, 2017 prayed for further extension of time by 15 days to pay the balance amount. The request of the contesting respondent was rejected by the Authorized Officer by his letter dated 21st October, 2017 and the contesting

respondent was advised to make payment of the balance amount on or before 23rd October, 2017. Since the contesting respondent did not pay the balance amount of the sale price by 23rd October, 2017, the Authorized Officer sent a letter dated 24th October, 2017 to the contesting respondent informing him that the e-auction sale held on 15th September, 2017, which was concluded in his favour, stands cancelled and that the amount of Rs. 30,75,000/- paid by him forfeited.

c. The contesting respondent, seeking to intervene in the proceedings before the DRT, had applied for advancement of the date of hearing of the application under section 17. He also applied for extension of time to deposit the balance amount till the disposal of the interim application filed before the DRT by Stallion. DRT advanced the hearing date from 6th November, 2017 to 31st October, 2017. An order dated 31st October, 2017 was also

passed directing the Authorized Officer to maintain *status quo* and while calling for counter-affidavits, the case was posted to 28th November, 2017.

d. The order of *status quo* passed by the DRT was challenged by the Authorized Officer in an appeal carried before the Debts Recovery Appellate Tribunal, Chennai (for brevity "the DRAT", hereafter). On 12th December, 2017, the DRAT permitted the Authorized Officer to proceed with fresh auction without, however, vacating the order of *status quo* passed earlier.

e. Availing the liberty granted by the DRAT, the Authorized Officer issued fresh e-auction notice dated 15th December, 2017, fixing 5th January, 2018 as the date of auction. The contesting respondent having come to learn of such notice filed an interim application before the DRT seeking stay of the auction; however, by an order dated 3rd January, 2018, the DRT

dismissed the application relying on the interim order of the DRAT dated 12th December, 2017 but granted liberty to the contesting respondent to participate in the e-auction proposed to be held on 5th January, 2018. The auction, however, could not be held on 5th January 2018 for want of adequate number of bidders.

4. It was, at this stage, that the contesting respondent invoked the writ jurisdiction of the High Court seeking refund of the forfeited amount of Rs. 30,75,000/-, by challenging the letter dated 24th October, 2017 of the Authorized Officer.

5. During the pendency of the writ proceedings before the High Court, the secured asset was once again put up for sale by auction and was sold for 1,23,00,000/-.

6. The High Court, upon hearing the parties, was of the view that the Authorized Officer having sold the secured assets for the very same value of Rs. 1,23,00,000/- to another auction purchaser, which

was the same amount quoted by the contesting respondent, the Bank *"should not be permitted to enrich by forfeiting the amount from the writ petitioner and simultaneously appropriate the sale proceeds from the highest bidder in the auction sale notice dated 15.12.2017".* Consequently, the High Court directed refund of the amount of Rs. 30,75,000/- within 4 weeks with interest @ 9% per annum on the amount to be refunded till refund is effected.

7. Appearing in support of the appeal, counsel for the Authorized Officer contended that the High Court committed gross error in ordering a refund of Rs. 30,75,000/- to the contesting respondent. According to him, the contesting respondent by his letter dated 27th September, 2017 had prayed for extension of 25 days' time to deposit the balance amount of sale price and upon grant of such prayer, time was allowed till 23rd October, 2017; however, the contesting respondent did not make payment within the extended date by raising the

bogey of pendency of proceedings before the DRT, at the instance of Stallion. He further contended that prior to 31st October, 2017, no order of stay passed by the DRT was subsisting and there was absolutely no reason for the contesting respondent, if he was genuinely interested in closing the deal, to deposit the balance amount of sale price while at the same time reserving his right to claim the entire amount deposited, if the sale did not fructify. It was also contended that the contesting respondent had applied for extension of time to deposit the balance amount before the DRT, but no order was passed on his application and the Authorized Officer, perceiving that the contesting respondent was seeking to delay matters, rightly proceeded to forfeit the amount of Rs. 30,75,000/. He, accordingly, submitted that the impugned judgment and order of the High Court is unsustainable in law and, hence, deserves to be set aside.

8. *Per contra,* counsel for the contesting respondent sought to impress upon us that the order directing refund was passed on a concession made by counsel for the first respondent before the High Court, i.e., the Authorized Officer; hence, the appeal was not maintainable. In the alternative, he contended that the Bank having sold the secured asset through a subsequent auction which fetched Rs. 1,23,00,000/-, i.e., the same price at which the contesting respondent intended to purchase the immovable property, it cannot be the case of the Authorized Officer or, for that matter, the Bank that the latter has suffered any financial loss. He further contended that although not assigned as a specific ground for interference, a bare reading of the impugned judgment and order would reveal that the direction for refund was made bearing in mind such circumstance that the Bank did not suffer any loss. He also contended that there has to be an overall consideration of the facts and circumstances obtaining in the case which led the contesting

respondent to reasonably believe that pendency of proceedings before the DRT at the instance of Stallion would result in the entire sale price, if deposited, being blocked. In such view of the matter, the Authorized Officer without proper consideration of the entire facts and circumstances proceeded to forfeit the amount deposited. Since, there has been patent arbitrariness on the part of the Authorized Officer in not acceding to the request of the contesting respondent to extend the time further, the High Court was justified in its interference with the order of forfeiture and rightly directed refund. It was, thus, prayed that the appeal be dismissed.

9. We have heard counsel for the parties and perused the materials on record.

10. At the outset, we reject the contention of the contesting respondent that the High Court, based on concession of counsel for the Authorized Officer, proceeded to pass the order for refund. After referring to the applicable statutory

provisions, the said counsel submitted before the Court that the interest of the Authorized Officer should be taken care of. Such a submission does not, in our considered view, amount to any concession rendering the appeal not maintainable.

11. Two legal questions now arise for consideration:

(i) Whether the power of forfeiture was exercised by the Authorized Officer in an arbitrary manner?

(ii) Whether the High Court was justified in its interference with the forfeiture order on the ground assigned in the impugned judgment and order?

12. Sale of a secured asset, which is an immovable property, is regulated by rule 9 of the Security Interest (Enforcement) Rules, 2002 (for brevity “the Rules”, hereafter). Sub-rules (2), (3), (4) and (5) thereof are relevant for answering the first question. The same read as under:

"(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 8:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty-five per cent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold."

13. Bare perusal of the aforesaid provisions reveals an ordainment in sub-rule (4) that on mutual agreement, the time for making deposit of the balance amount of sale price can be extended for a period not exceeding ninety days; but, extension beyond ninety days is not permissible on any count. Since grant of extension for intermittent periods so that the duration of such periods taken together does not exceed ninety days would suggest some element of discretion being reserved unto the authorized officer of a secured creditor under sub-rule (5) of rule 9. However, there can be no gainsaying that such discretion has to be exercised reasonably and not on whims or caprice; at the same time, no auction purchaser can claim extension as a matter of right and that too beyond the statutorily prescribed period. Whether or not a case for extension does exist would depend upon the peculiar facts of each case and no strait-jacket formula can ever be laid down therefor. If, however, circumstances are shown to exist where a bidder is faced with such a

grave disability that he has no other option but to seek extension of time on genuine grounds so as not to exceed the stipulated period of ninety days and the prayer is rejected without due consideration of all facts and circumstances, refusal of the prayer for extension could afford a ground for a judicial review of the decision-making process on valid ground(s). One such exceptional circumstance led to the decision in **Alisha Khan vs Indian Bank (Allahabad Bank)**[1], where this Court intervened and granted relief because, due to COVID complications, the appellant had failed to pay the balance amount.

14. Sub-rule (5) of rule 9 does envisage forfeiture, should there be a default in payment of the balance amount of purchase price within the period mentioned in sub-rule (4). The power of forfeiture is, therefore, statutorily conferred. It may also be noted in this connection that the express power conferred on a secured creditor by sub-rule (5) of rule 9 of the Rules to forfeit the

[1] 2021 SCC OnLine SC 3340

initial deposit made by the bidder in case he commits any default in paying installments of the sale price to the secured creditor has been held by this Court in **Agarwal Tracom Private Ltd vs Punjab National Bank and Ors.**[2] to be an action which is part of the measures specified in section 13(4) of the SARFAESI Act and, therefore, amenable to challenge on valid ground(s) in an application under section 17(1) thereof.

15. Before we take our discussion forward, it is necessary to ascertain the true character of the term 'forfeiture'. Black's Law Dictionary, *inter alia*, explains 'forfeiture' as *"the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty"* or *"something (esp. money or property) lost or confiscated by this process; a penalty"*. It is also explained as "*a destruction or deprivation of some estate or right because of the failure to perform some obligation or condition contained in a contract*".

[2] (2018) 1 SCC 626

16. It is also found from the same dictionary that though penalty is usually referable to a crime, penalty is sometimes imposed for civil wrongs such as a statutory penalty for a statutory violation; especially, a penalty imposing automatic liability on a wrongdoer for violation of the terms of a statute without reference to any actual damage suffered.

17. A Constitution Bench of this Court in **R.S. Joshi vs Ajit Mills Ltd.**[3] held that *"(F)orfeiture, as judicially annotated, is a punishment annexed by law to some illegal act or negligence"*. This Court referred to its earlier decision in **Bankura Municipality vs Lalji Raja & Sons**[4] where it was observed:

> *"According to the dictionary meaning of the word 'forfeiture' the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement it would not come within the definition of forfeiture".*

[3] (1977) 4 SCC 98
[4] AIR 1953 SC 248

18. Having regard to the terms of rule 9, the notice for auction constitutes the ‘invitation to offer’; the bids submitted by the bidders constitute the ‘offer’ and upon confirmation of sale in favour of the highest bidder under sub-rule (2) of rule 9, the contract comes into existence. Once the contract comes into existence, the bidder is bound to honour the terms of the statute under which the auction is conducted and suffer consequences for breach, if any, as stipulated. Rule 9(5) legislatively lays down a penal consequence. ‘Forfeiture’ referred to in sub-rule (5) of rule 9, in the setting of the SARFAESI Act and the Rules, has to be construed as denoting a penalty that the defaulting bidder must suffer should he fail to make payment of the entire sale price within the period allowed to him by the authorized officer of a secured creditor.

19. Though it is true that the power conferred by sub-rule (5) of rule 9 of the Rules ought not to be

exercised indiscriminately without having due regard to all relevant facts and circumstances, yet, the said sub-rule ought also not be read in a manner so as to render its existence only on paper. Drawing from our experience on the Bench, it can safely be observed that in many a case the borrowers themselves, seeking to frustrate auction sales, use their own henchmen as intending purchasers to participate in the auction but thereafter they do not choose to carry forward the transactions citing issues which are hardly tenable. This leads to auctions being aborted and issuance of fresh notices. Repetition of such a process of participation-withdrawal for a couple of times or more has the undesirable effect of rigging of the valuation of the immovable property. In such cases, the only perceivable loss suffered by a secured creditor would seem to be the extent of expenses incurred by it in putting up the immovable property for sale. However, what does generally escape notice in the process is that it is the mischievous borrower who steals a march over

the secured creditor by managing to have a highly valuable property purchased by one of its henchmen for a song, thus getting such property freed from the clutches of mortgage and by diluting the security cover which the secured creditor had for its loan exposure. Bearing in mind such stark reality, sub-rule (5) of rule 9 cannot but be interpreted pragmatically to serve twin purposes — first, to facilitate due enforcement of security interest by the secured creditor (one of the objects of the SARFAESI Act); and second, to prohibit wrong doers from being benefitted by a liberal construction thereof.

20. In terms of the Indian Contract Act, 1872 (for brevity “Contract Act”, hereafter), a person can withdraw his offer before acceptance. However, once a party expresses willingness to enter into a contractual relationship subject to terms and conditions and makes an offer which is accepted but thereafter commits a breach of contract, he does so at his own risk and peril and naturally has

to suffer the consequences. We are not oblivious of the terms of section 73 and section 74 of the Contract Act, being part of Chapter VI thereof titled *"Of the Consequence of Breach of Contract"*. These sections, providing for compensation for breach of contract and for liquidated damages, have remained on the statute book for generations and permit the party suffering the breach to recover such quantum of loss or damage from the party in breach. However, with changing times, the minds of people are also changing. The judiciary, keeping itself abreast of the changes that are bound to occur in an evolving society, must interpret new laws that are brought in operation to suit the situation appropriately. In the current era of globalization, the entire philosophy of society, mainly on the economic front is making rapid strides towards changes. Unscrupulous people have been inventing newer modes and mechanisms for defrauding and looting the nation. It is in such a scenario that provisions of enactments, particularly those provisions which

have a direct bearing on the economy of the nation, must receive such interpretation so that it not only fosters economic growth but is also in tune with the intention of the law-makers in introducing a provision such as sub-rule (5) of rule 9, which though harsh in its operation, is intended to suppress the mischief and advance the remedy. If indeed section 73 and section 74, which are part of the general law of contract, were sufficient to cater to the remedy, the need to make sub-rule (5) of rule 9 as part of the Rules might not have arisen. Additionally, insertion of sub-rule (5) with such specificity regarding forfeiture must not have been thought of only for reiterating what is already there. It was visualized by the law makers that there was a need to arrest cases of deceptive manipulation of prices at the instance of unscrupulous borrowers by thwarting sale processes and this was the trigger for insertion of such a provision with wide words conferring extensive powers of forfeiture. The purpose of such insertion must have also been aimed at

instilling a sense of discipline in the intending purchasers while they proceed to participate in the auction-sale process. At the cost of repetition, it must not be forgotten that the SARFAESI Act was enacted because the general laws were not found to be workable and efficient enough to ensure liquidity of finances and flow of money essential for any healthy and growth-oriented economy. The decision of this Court in **Mardia Chemicals vs Union of India**[5], while outlawing only a part of the SARFAESI Act and upholding the rest, has traced the history of this legislation and the objects that Parliament had in mind in sufficient detail. Apart from the law laid down in such decision, these are the other relevant considerations which ought to be borne in mind while examining a challenge to a forfeiture order.

21. There is one other aspect which is, more often than not, glossed over. In terms of sub-rule (5) of rule 9, generally, forfeiture would be followed by an exercise to resell the immovable property. On

[5] (2004) 4 SCC 311

the date an order of forfeiture is in contemplation of the authorized officer of the secured creditor for breach committed by the bidder, factually, the position is quite uncertain for the former in that there is neither any guarantee of his receiving bids pursuant to a future sale, much to the satisfaction of the secured creditor, nor is there any gauge to measure the likely loss to be suffered by it (secured creditor) if no bidders were interested to purchase the immovable property. Since the extent of loss cannot be immediately foreseen or calculated, such officers may not have any option but to order forfeiture of the amount deposited by the defaulting bidder in an attempt to recover as much money as possible so as to reduce the secured debt. That the immovable property is later sold at the same price or at a price higher than the one which was offered by the party suffering the forfeiture is not an eventuality that occurs in each and every case. Sections 73 and 74 of the Contract Act would not, therefore, be sufficient to take care of the interest of the secured creditor in such a

case and that also seems to be another reason for bringing in the provision for forfeiture in rule 9. Ordinarily, therefore, validity of an order of forfeiture must be judged considering the circumstances that were prevailing on the date it was made and not based on supervening events.

22. Does sub-rule (5) of rule 9, which is part of a delegated legislation, i.e., the Rules, have the effect of diluting section 73 and section 74 of the Contract Act? We have considered it necessary to advert to this question as it is one of general importance and are of the considered opinion that the answer must be in the negative. While the Contract Act embodies the general law of contract, the SARFAESI Act is a special enactment, *inter alia,* for enforcement of security interest without intervention of court. Rule 9(5) providing for forfeiture is part of the Rules, which have validly been framed in exercise of statutory power conferred by section 38 of the SARFAESI Act. Law is well settled that rules, when validly framed,

become part of the statute. Apart from the presumption as to constitutionality of a statute, the contesting respondent did not mount any challenge to sub-rule (5) of rule 9 of the Rules. The applicability and enforcement of sub-rule (5) of rule 9 on its terms, therefore, has to be secured in appropriate cases.

23. That apart, significantly, section 35 of the SARFAESI Act mandates that the provisions thereof would have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any other instrument having effect by virtue of any such law. At the same time, section 37 of the SARFAESI Act postulates that provisions thereof or the rules made thereunder shall be in addition to and not in derogation of the enumerated enactments or any other law for the time being in force. What is of importance is that the *non-obstante* clause in section 35 of the SARFAESI Act is not subject to section 37 thereof; however, a plain reading of the

latter provision would suggest that rights, liabilities, obligations, remedies, etc. created/imposed/ provided by the SARFAESI Act and the Rules are preserved, irrespective of what is provided in the stated enactments or any other law for the time being in force. The regime under the SARFAESI Act is altogether different and sections 35 and 37 are intended to extend a cover to the secured creditor if it abides by the governing law, which cannot be subject to any other provision of a general law like the Contract Act. Since section 35 overrides other laws in the same or related field and having regard to the scheme of the SARFAESI Act and the dominant purpose sought to be achieved, as noted above, none can and should be allowed to take the auctions conducted thereunder lightly. No court ought to countenance a bidder entering and exiting the process at his sweet will without any real intent to take it to fruition. The provisions of the SARFAESI Act as well as the Rules are to be interpreted positively and purposefully in the

context of a given case to give meaning to sub-rule (5) of rule 9. Besides, we have no hesitation to hold that in case of any seeming conflict or inconsistency between the general law, i.e., the Contract Act and the special law, i.e., the SARFAESI Act, it is the latter that would prevail.

24. The up-shot of the aforesaid discussion is that whenever a challenge is laid to an order of forfeiture made by an authorized officer under sub-rule (5) of rule 9 of the Rules by a bidder, who has failed to deposit the entire sale price within ninety days, the tribunals/courts ought to be extremely reluctant to interfere unless, of course, a very exceptional case for interference is set up. What would constitute a very exceptional case, however, must be determined by the tribunals/courts on the facts of each case and by recording cogent reasons for the conclusion reached. Insofar as challenge to an order of forfeiture that is made upon rejection of an application for extension of time prior to expiry of

ninety days and within the stipulated period is concerned, the scrutiny could be a bit more intrusive for ascertaining whether any patent arbitrariness or unreasonableness in the decision-making process has had the effect of vitiating the order under challenge. However, in course of such scrutiny, the tribunals/courts must be careful and cautious and direct their attention to examine each case in some depth to locate whether there is likelihood of any hidden interest of the bidder to stall the sale to benefit the defaulting borrower and must, as of necessity, weed out claims of bidders who instead of genuine interest to participate in the auctions do so to rig prices with an agenda to withdraw from the fray post conclusion of the bidding process. In course of such determination, the tribunals/courts ought not to be swayed only by supervening events like a subsequent sale at a higher price or at the same price offered by the defaulting bidder or that the secured creditor has not in the bargain suffered any loss or by sentiments and should stay at a

distance since extending sympathy, grace or compassion are outside the scope of the relevant legislation. In any event, the underlying principle of least intervention by tribunals/courts and the overarching objective of the SARFAESI Act duly complimented by the Rules, which are geared towards efficient and speedy recovery of debts, together with the interpretation of the relevant laws by this Court should not be lost sight of. Losing sight thereof may not be in the larger interest of the nation and susceptible to interference.

25. In the present case, undisputedly, payment of 25% of the sale price was made by the contesting respondent on 15th September, 2017; hence sub-rule (3) of rule 9 stood complied with. The contesting respondent was notified to deposit the balance 75% of the sale price by 29th September, 2017. Admittedly, he could not or did not so deposit till 27th September, 2017, whereupon he prayed for extension of time by 25

days by his request letter of even date, i.e., 27th September, 2017. The Authorized Officer responded favourably and extended the time for deposit by 25 days as prayed by the contesting respondent, i.e., till 23rd October, 2017. Extension of time till 23rd October, 2017, therefore, was by mutual agreement – a course of action permitted by sub-rule (4). On 20th October, 2017, the contesting respondent made a further request for extension of time by 15 days citing pendency of proceedings at the instance of Stallion before the DRT. This request came to be rejected by the Authorized Officer by his letter dated 21st October, 2017 referring to absence of any order of stay in operation and that the contesting respondent was free to deposit the balance amount of sale price and take possession of the auctioned immovable property. The contesting respondent not having deposited the balance amount of sale price by 23rd October, 2018, the mutual agreement for extension of time, thus, lapsed with effect from 24th October, 2017. This resulted in the order of

forfeiture being passed by the Authorized Officer in terms of sub-rule (5).

26. We do not see reason to hold that there has either been any manifest arbitrariness or unreasonableness, which warranted interdiction with the order of forfeiture. The contesting respondent in terms of the statutory ordainment was required to pay the balance amount of sale price on or before 15 days of confirmation of sale. Days prior to expiry of such period, he prayed for an extension of 25 days. Such prayer was granted. Further prayer for extension was made ten days after receipt of summons from the DRT. The exact date on which the contesting respondent applied before the DRT for extension of time as well as the exact terms of the order passed on such application, however, is not available on record. We shall proceed on the premise that the prayer for extension of time was not granted. The order of the Authorized Officer dated 24th October, 2017 forfeiting 25% of the sale price was also not

challenged by the contesting respondent before the DRT in any independent proceeding; on the contrary, after the DRAT granted permission to the Authorized Officer to conduct sale afresh by its order dated 12th December, 2017 and pursuant whereto a fresh e-auction notice was issued on 18th December, 2017, the contesting respondent had instituted an independent application under section 17(1) of the SARFAESI Act before the DRT and had also filed I.A. No. 2542/2017 therein for interim stay of e-auction. The DRT by its order dated 3rd January, 2018 dismissed I.A. No. 2542/2017 relying upon the order of the DRAT dated 12th December, 2017, but permitted the contesting respondent to participate in the e-auction to be held on 5th January, 2018 which failed for want of bidders. It is then that the contesting respondent instituted the writ petition before the High Court.

27. Under such circumstances, it has to be held that the transaction fell through by reason of the

default or failure of the contesting respondent to deposit 75% of the sale price by 23rd October, 2017, as per the terms of rule 9(4). On facts, we find that the contesting respondent was arranging for funds when he received the summons from the DRT on 10th October, 2017. It is, therefore, clear that at least till that date, the contesting respondent was lacking in financial resources to make payment of the entire sale price. Although it is not always necessary for an auction purchaser to arrange for funds and be ready to pay the entire sale price within 15 days of confirmation of sale, since extension of time is contemplated in rule 9, it is beyond our comprehension why the contesting respondent while applying for an extension of time on 27th September, 2017 sought for only 25 days' time and not for more time, at least up to the entire period of ninety days, being the maximum time that he could have asked for and made available to him in terms of rule 9(4). He had also moved the DRT for extension of time, which was not granted. The DRT, however, granted him

liberty to participate in the auction to be held on 5th January, 2018 but without waiving any condition. These are circumstances which certainly are adverse to the contesting respondent.

28. Also, the terms of the auction notice made it clear that the auction sale would be conducted in terms of the provisions contained in the SARFAESI Act. All prospective bidders were, therefore, put on guard as to what could follow in case of a default or neglect. Notwithstanding the proceedings that were initiated before the DRT by Stallion of which the contesting respondent became aware on 10th October, 2017, nothing prevented him from making full payment of the balance amount and have the sale certificate issued in his favour. It can be inferred from the facts and circumstances that the contesting respondent was seeking to buy time. Counsel for the contesting respondent has not shown how the Authorized Officer acted in derogation of the statute. Indeed, it was open to the Authorized Officer to extend the time further;

equally, he was also free not to grant further extension having regard to the conduct of the contesting respondent. When two options are legally open to be exercised in a given set of facts and circumstances and one option is exercised, which does not appear to be wholly unreasonable, it is not for the writ court to find fault on the specious ground that the secured creditor has not suffered any financial loss. That such creditor had not suffered financial loss cannot be the sole determinative factor in view of the special law that the SARFAESI Act is. As noted above, efforts made by recalcitrant borrowers to stall sale proceedings at any costs is not uncommon. Many a time, when a sale does not fructify because of an injunction, the time taken and efforts made together with costs incurred by the secured creditor to put up the secured asset (immovable property) for sale once again and close the transaction by itself may result in prejudicial affectation of its interest in enforcement of the security interest. While dealing with a case covered by rule 9 of the Rules, an

order of forfeiture of sale price should not be lightly interfered. The contesting respondent was not genuinely interested in proceeding with his part of his obligations and we see no arbitrariness in the action of the Authorized Officer in forfeiting Rs. 30,75,000/- being 25% of the sale price.

29. The first question is answered accordingly.

30. Moving on to the second question, we find the High Court to have committed an error of law in directing refund on the ground that the Bank *"should not be permitted to enrich by forfeiting the amount from the writ petitioner".* It is not a question of the Bank's enrichment or deriving any undue advantage that the Court was really concerned with. It seems to have posed a wrong question for being answered.

31. The circumstances of the case make it imperative to consider the question: when does an enrichment or unjust enrichment occur?

32. **Mahabir Kishore vs. State of Madhya Pradesh**[6] is a decision of this Court which traced various English decisions and ultimately laid down the requirements of unjust enrichment as follows:

> *"11. The principle of unjust enrichment requires: first, that the defendants has been 'enriched' by the receipt of a 'benefit'; secondly, that this enrichment is 'at the expense of the plaintiffs'; and thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved."*

33. In **Sahakari Khand Udyog Mandal Ltd. vs. CCE & Customs**[7], this Court had the occasion to reiterate that unjust enrichment means retention of a benefit by a person that is unjust or inequitable. Unjust enrichment occurs when a person retains money or benefit which in justice, equity and good conscience, belongs to someone else. The doctrine of unjust enrichment, therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of

[6] (1989) 4 SCC 1
[7] (2005) 3 SCC 738

recovery under the doctrine of unjust enrichment arises where retention of a benefit is considered contrary to justice or against equity.

34. Yet again, in **Indian Council for Enviro-Legal Action vs. Union of India**[8], this Court held that a person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust.

35. In the light of guidance provided by the above decisions, what needs to be ascertained first is whether the Bank received or derived any benefit or advantage by forfeiture of 25% of the sale price. We do not think that the Bank has been enriched, much less unjustly enriched, by reason of the impugned forfeiture. Receipt of 25% of the sale price by the Bank from the contesting respondent was not the outcome of any private negotiation or arrangement between them. It was pursuant to a public auction, involving a process of offer and acceptance, and it was in terms of statutory provisions contained in the Rules,

[8] (2011) 8 SCC 161

particularly rule 9(3), that money changed hands for a definite purpose. Receipt of 25% of the sale price does not constitute a benefit, a *fortiori*, retention thereof by forfeiture cannot be termed unjust or inequitable, so as to attract the doctrine of unjust enrichment. The Bank, as a secured creditor, is entitled in law to enforce the security interest and in the process to initiate all such steps and take all such measures for protection of public interest by recovering the public money, lent to a borrower and who has squandered it, in a manner authorized by law. The contesting respondent participated in the auction well and truly aware of the risk of having 25% of the sale price forfeited in case of any default or failure on his part to make payment of the balance amount of the sale price. Question of the Bank being enriched by a forfeiture, which is in the nature of a statutory penalty, does not and cannot therefore arise in the circumstances.

36. The High Court, in our considered opinion, failed to bear in mind the settled principle of law

that the power of judicial review of a writ court will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes, unless a clear-cut case of arbitrariness or *mala fides* or bias or irrationality is made out. On the pleadings, this was not one such case where the High Court should have interfered.

37. The question under consideration can also be addressed from a different perspective. In the present case, the Authorized Officer had adhered to the statutory rules. If by such adherence any amount is required to be forfeited as a consequence, the same cannot be scrutinized wearing the glasses of misplaced sympathy. Law is well settled that a result flowing from a statutory provision is never an evil and that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statute must, of course, be given effect to whether a court likes the result or not. This is the statement of law in the decision of this Court in

Martin Burn Ltd vs The Corporation of Calcutta[9].

38. There being no enrichment of the Bank by reason of the impugned forfeiture, based on our reading of the aforesaid decisions, we answer the second question by holding that the High Court was not justified in exercising writ jurisdiction and directing a refund of 25% of the sale price.

39. One of the points raised by counsel for the Authorized Officer is that the writ petition of the contesting respondent was not maintainable having regard to the alternative remedy available to him under section 17(1) of the SARFAESI Act. The objection to the maintainability of the writ petition has substance; but since we have examined the questions arising for decision on its merits, relegating the contesting respondent to the forum under section 17(1) of the SARFAESI Act would serve no useful purpose.

[9] (1966) 1 SCR 543

40. For the reasons aforesaid, the impugned judgment and order of the High Court stands set aside and the civil appeal stands allowed. Parties shall, however, bear their own costs.

.....J
(S. RAVINDRA BHAT)

.....J
(DIPANKAR DATTA)

NEW DELHI;
10th April, 2023.