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CELIR LLP V. BAFNA MOTORS – SC HOLDS THAT A MORTGAGOR’S RIGHT OF REDEMPTION EXTINGUISHES ON ISSUE OF NOTICE OF AUCTION UNDER THE SARFAESI ACT

7 October 2023 **Factual background**

A three-judge Bench of the Supreme Court recently interpreted the amended provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (SARFAESI Act) regarding a borrower’s right of redemption during an auction sale process in Celir LLP v Bafna Motors, 2023 SCC OnLine SC 1209. In the facts of the case, the borrower availed a lease rental discounting credit facility of INR 100 crores from the Union Bank of India (Bank) in 2017. By way of security, a mortgage was created over a parcel of land and structures thereon; additionally, a guarantee was also issued in favour of the Bank. Due to default on part of both the borrower and the guarantor, the Bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The borrower initiated proceedings before the Debt Recovery Tribunal, Mumbai (DRT) to challenge the demand notice. The Bank subsequently conducted various auctions to sell the mortgaged asset and realise its outstanding dues. The ninth auction was successfully conducted in June 2023 in favour of Celir LLP, the appellant (Appellant), who was the highest bidder with an offer of INR 105.5 crores.

The Bank confirmed the sale and the Appellant deposited 25% of the bid amount. To counter the auction purchase, the borrower filed an application for redemption of the mortgage in the original DRT proceedings and initiated writ proceedings before the Hon’ble Bombay High Court under Article 226 of the Constitution. Meanwhile, the Appellant deposited the balance of the total bid amount. Before the Hon’ble Bombay High Court, the borrower expressed its willingness to pay a total sum of INR 129 crores to redeem the mortgage under Section 60 of the Transfer of Property Act, 1860 (TPA), which offer was accepted by the Bank. On 17 August 2023, the Hon’ble High Court allowed the borrower’s writ petition as the Bank consented to the same and subjected the confirmation of the auction sale to the borrower’s performance of its promise to pay the agreed amount. The borrower discharged its promised obligations and obtained a “no dues certificate” from the Bank. Against that backdrop, the Appellant approached the Supreme Court by way of a civil appeal against the Judgement of the High Court.

Arguments of the Appellant

The Appellant asserted that – *first*, in light of the amended Section 13(8) of the SARFAESI Act, the right of redemption of a mortgagor stands extinguished upon the publication of an auction notice under Rule 9 of the Security Interest (Enforcement) Rules, 2002, (Rules) – as opposed to the execution of the sale contract pursuant to a successfully conducted auction; and *second*, the Bank had confirmed the sale to the Appellant and (a) the Bank was obligated to confer a sale certificate upon the Appellant, and (b) the Bank was estopped from consenting to the pleas of the borrower before the High Court.

Arguments of the Respondents

The Respondents (borrowers, the Bank, the guarantor) cautioned against the perils of interpreting the amended Section 13(8) of the SARFAESI Act in a manner which may extinguish a borrower’s right of redemption even before an actual sale has occurred – that is, upon the registration of such sale under Section 17 of the Registration Act, 1908.

The Issue before the Supreme Court

The Supreme Court examined the changes brought to Section 13(8) of the SARFAESI Act by the 2016 amendments to engage with the following issue: till when is a borrower’s right to redeem preserved in an auction sale held under the SARFAESI Act?

Pre-2016 Amendment (Section 13 (8))	Post-2016 Amendment Section 13 (8)
<p>(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor <u>at any time before the date fixed for sale or transfer</u>, 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.</p>	<p>(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 <u>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</u> –</p> <p>(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and</p> <p>(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.</p>

The Supreme Court observed that pre-amendment Section 13(8) was in consonance with the jurisprudence developed on a mortgagor’s right of redemption under the TPA Act – a mortgagor’s right of redemption extinguishes only upon the conclusion of an actual sale. However, post the 2016 amendments to the SARFAESI Act, the right of a borrower to redeem a secured asset stands extinguished on the very date of publication of the notice for public auction under the Rules. The Court held that failure on the part of the borrower in tendering the entire dues before the publication of the auction notice as per Section 13(8) of the SARFAESI Act constituted an “*extinguishment of right of redemption of mortgage*”. The Court also observed that an unrestricted right of redemption in favour of a borrower/mortgagor runs contrary to the basic tenets of an auction process and would result in loss of confidence in an auction process. The Court set aside the High Court judgment and inter alia directed the Appellant to deposit an additional amount of Rs. 23.95 crore within one week.

Comment

The Supreme Court interpreted Section 13(8) of the SARFAESI Act in accordance with its clear and unequivocal language and ruled in favour of the sanctity of an auction process against the principle of value maximization when such value maximization may potentially result in a total loss of confidence in an auction process.

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