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## **M. Rajendran & Ors. v. M/S KPK Oils and Proteins India Pvt. Ltd. & Ors.**

Case citation- 2025 INSC 1137

### **Facts of the Case**

In the above case, the appellant is an Auction Purchaser. Respondent 1-4 are the Borrowers with Respondent 5 being the Bank. A detailed timeline of the facts is attached below.

- On 06.01.2016, the Bank granted Respondent 1 a cash credit of 5 crores and a term loan of 30 lakhs, with Respondent 2,3 and 4 standing as guarantors. The deed included a mortgage over immovable property for the purpose of securing repayment of credit facilities.
- On 31.12.2019, the Bank declared the dues as a Non-performing Asset (NPA) with ₹3,96,15,672 due for which a notice was sent as on 12.02.2020 under Section 13(2) of the SARFAESI Act.
- On 28.10.2020, Bank sent a notice for possession under Section 13(4) of the SARFAESI Act based on debt amount ₹4,39,82,862.20 which was payable as on 30.09.2020. Furthermore, on 31.10.2020, the Bank published the Possession Notice in two newspapers, namely, “New Indian Express” in English and “Dinamani” in vernacular language
- On 28.12. 2020, Respondent 4 filed a petition in front of the DRT (Coimbatore) challenging the possession notice dated 28.10.2020
- On 22.01.2021, the Bank issued an Auction Sale Notice for sale of the secured subject property for recovery of INR 4,55,64,590.20 due and payable as on 31.12.2020. The same was published in the newspaper on 24.01.2021
- In response, the borrowers along with Shri Palanisami filed a petition under Section 17 of the SARFAESI Act challenging the aforesaid Auction Sale Notice before the DRT, Coimbatore.
- On 26.02.2021, the appellant successfully bid in Auction Sale for sale consideration of ₹1,25,60,000/-, and deposited the entire sale consideration with the Bank on 20.03.2021. Further, a sale certificate was issued on 22.03.2021 for the same. The sale consideration was appropriated towards the outstanding loan amount. As of March 2021, ₹2,88,00,000 stood as paid up with ₹61,91,000 as still outstanding towards the loan amount.
- On 07.05.2021, the borrowers paid an amount of ₹62,74,123.74 towards the outstanding dues for releasing the other properties. the Bank closed the loan account of the borrowers after appropriating a sum of ₹1,25,60,000 received by it out of the sale consideration on auction of the secured assets as aforesaid.
- On 19.01.2023, the DRT, Coimbatore dismissed both the petitions filed.
- The borrower filed a Writ Petition in the High Court challenging the Sale Certificate dated 22.03.2021. Consequently, High Court issued an order of status quo on 24.01.2023, subject to ₹50,00,000 being paid by 25.01.2023 and the balance amount within a period of next seven working days.

- On 24.01.2023, the borrowers deposited ₹50,00,000 along with another demand draft of ₹92,01,158 dated 31.01.2023 with the Bank.
- The High Court relied on decision of this Court in *Mathew Varghese v. Amritha Kumar and Ors.* (2014) 5 SCC 610 and allowed the petition. Thereby, it directed the Bank to close the loan account and return the money to the auction borrowers as the sale certificate was quashed. Consequentially, the Auction Purchaser had appealed before the Supreme Court.

### **Issues before the Court**

Whether the High Court committed any error in passing the impugned judgement and order?

- Effect of the 2016 Amendment on the Right of Redemption under Section 13(8) of the SARFAESI Act.
- Whether the amended Section 13(8) of the SARFAESI Act is retrospectively applicable?

### **Arguments**

#### Petitioners Arguments (KM. Rajendran)

The counsel contended that the High Court committed an egregious error in entertaining the writ petition and passing the impugned judgement and order. Moreover, the case is now covered under the Supreme Court precedent of *Celir LLP v. Bafna Motors (Mumbai) Private Ltd.* (2024) 2 SCC 1.

#### Respondent's Arguments (M/S KPK Oils and Proteins India Pvt. Ltd.)

The ratio/principles enunciated in the case of *Bafna Motors* are not applicable in the facts and circumstances of the present case as the loan was obtained on 06.01.2016, prior to the date of amendment to Section 13(8), i.e., 01.09.2016. Therefore, with no retrospective operation of the amended law, the High Court has not committed any error in its judgement.

### **Judgement**

Prior to the 2016 amendment, the Supreme Court in the case of *Mathew Varghese* held that borrower retains his full right to redeem the property by tendering all the dues to the secured creditor, at any time before the date fixed for sale or transfer. The Court further added that leniency is to be used to protect the constitutional right to property, thereby allowing redemption prior to sale. Furthermore, this Court in *Narandas Karsondas v. S.A. Kamtam & Anr.* (1997) 3 SCC 247, upon examining Section 60 of the Transfer of Property Act, held that the mortgagor's right to redeem will stand extinguished only after completion of sale by a registered deed.

However, in *Bafna Motors* this Court held that a borrower has a right to redeem the mortgage only till the publication of the Auction Notice under the amended Section 13(8) of the SARFAESI Act effective as on 1st September, 2016. Following the same, the High Court of Andhra Pradesh in *Sri. Sai Annadhatha Polymers & Anr. v. Canara Bank rep. by its Branch*

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*Manager, Mandanapalle 2018 SCC OnLine Hyd 178*, held that the post-amendment scenario inevitably requires a clear thirty-day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1). Thereof, it held that the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in *Mathew Varghese*, stands extinguished upon publication of the sale notice under Rule 9(1).” This reasoning was partially affirmed by the Court in the present case.

However, a few conflicting judgements held that the borrower retains full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. These include the cases of -

- i. *Concern Readymix v. Corporation Bank 2018 SCC OnLine Hyd 783* as decided by Telangana High Court
- ii. *S. Karthik and Ors. v. N. Subhash Chand Jain and Ors. (2022) 10 SCC 641* as decided by a three-Judge Bench of the Supreme Court
- iii. *Pal Alloys and Metal India Private Limited & Ors. v. Allahabad Bank & Ors. 2021 SCC OnLine P&H 2733*. as decided by Punjab & Haryana High Court.

Subsequently, the reasoning used in these cases was rejected by the Court.

#### Clarification on Notice Requirements and Redemption Rights

In finality, the Supreme Court held that Rules 8(6) with its proviso, Rule 8(7), and Rule 9(1) of the SARFAESI Rules do not envisage separate or independent notices of sale contrary to prior judgements. The prescribed modes of service, affixture, publication, and uploading are merely different methods of disseminating a single, composite “notice of sale” under Rule 8(5). The thirty-day embargo under Rule 9(1) does not render the newspaper publication distinct from the notice served to the borrower. It rather meant that the period must be computed from the date of valid issuance of the notice of sale, being the date on which service and publication requirements are completed, whichever is later. The notice may be served and published simultaneously with the caveat that no actual sale takes place before the expiry of thirty days period from the notice date. The Court further held that the borrower’s right of redemption stands extinguished on the date of valid issuance of the notice of sale.

On retrospectivity, it was held that as the claim was subsisting on 01.09.2016 and the auction notice was issued thereafter, the amended Section 13(8) would apply. Furthermore, the contention that the right of redemption must be governed by the date of the loan was rejected as misconceived and contrary to the object of the amendment.

#### **Conclusion**

In the result, both the appeals were allowed. The impugned judgement and order passed by the High Court was set aside. In finality, the Supreme Court held that the borrower’s right of redemption stands extinguished on the date of valid issuance of the notice of sale under the amended Section 13(8) of the SARFAESI Act.

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*(For a mind map on the judgement refer to the link below- SCOLR-Mindmap- M.Rajendran v. KPK Oils and Proteins India Pvt. Ltd.)*

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