

**Court No. - 42**

**Case :- CRIMINAL MISC. WRIT PETITION No. - 11838 of 2023**

**Petitioner :- Himri Estate Pvt. Ltd. And 4 Others**

**Respondent :- State Of U.P. And 2 Others**

**Counsel for Petitioner :- Varad Nath**

**Counsel for Respondent :- G.A.**

With

**Case :- CRIMINAL MISC. WRIT PETITION No. - 11837 of 2023**

**Petitioner :- Reena Bagga And Another**

**Respondent :- State Of U.P. And 2 Others**

**Counsel for Petitioner :- Raghav Dwivedi**

**Counsel for Respondent :- Syed Imran Ibrahim**

**Hon'ble Ashwani Kumar Mishra,J.**

**Hon'ble Ashutosh Srivastava,J.**

1. Petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, challenging the First Information Report lodged against them on 22.07.2023, registered as Case Crime No.611 of 2023, under Sections 420, 120-B of IPC and Section 82 of Registration Act, 1908, Police Station - Kavi Nagar, District - Ghaziabad. It is urged that the FIR is maliciously instituted in respect of a civil dispute and is thus an abuse of the process of law. It is also urged that the first informant has lodged the FIR on behalf of the borrower company, which undertook loan and defaulted in its repayment, on account of which proceedings were initiated in accordance with the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'). Borrower company since has failed to seek any protection before the competent forum, in respect of coercive proceedings under the SARFAESI Act, it has lodged the impugned FIR with the intent to pressurize the finance company as well as auction purchaser to withdraw lawful actions initiated against the borrower/defaulters. Prayer accordingly is made to quash the aforesaid FIR.

2. We have heard Sri Gopal S. Chaturvedi and Sri Siddharth Agarwal (through VC), learned Senior Advocate assisted by Sri Dhruv Kapur, Sri Debashish Chauhan, Sri Varad Nath, Sri Rajan Kohli, Sri Divya Lamba, Sri Maharshi Kaler and Sri Chiranjivi Sharma (through VC), Advocates for the petitioners in Writ Petition No. 11838 of 2023; Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Raghav Dwivedi, Advocate for the petitioner in Writ Petition No. 11837 of 2023 and Sri Syed Imran Ibrahim, learned counsel for the first informant/respondent no. 3 and Sri J.K. Upadhyaya and Sri Pankaj Kumar, learned AGA for the State and perused the materials on record.

3. The writ petition was entertained and despite the matter being deferred on different occasions no counter affidavit has been filed in the matter. When the matter was taken last on 14th March, 2024, following orders were passed:-

*"Learned State Counsel as well as Sri Syed Imran Ibrahim, learned counsel appearing for the private respondents pray for and are allowed three weeks and*

*no more time to file counter affidavit. Rejoinder affidavit may be filed within one week thereafter.*

*List this case on 15.04.2024."*

4. Though a stop order was passed granting last opportunity to the informant and the State to file a counter affidavit the respondents have not chosen to file any counter affidavit in the matter so far. Since opportunity to file counter affidavit has not been availed, we proceed with the hearing of the matter treating the averments made in the writ petition to be correct by applying the doctrine of *non-traverse*.

5. The first informant i.e. respondent no.3 claims to be a resident of District Ghaziabad and authorized representative of M/s Shipra Hotel Private Limited, a company registered under the Companies Act. Allegation in the first information report is that Plot No. 9, Ahinsakhand, Indirapuram, District Ghaziabad is owned by M/s Shipra Hotel Private Limited on which a Shipra Mall was constructed, which has been fraudulently and unauthorizedly transferred to the owners of M/s Himri Estate Pvt. Ltd. namely, Sumit Kumar Narwar through its authorized representative Rajeev Goel, by Smt. Reena Bagga, authorized representative of M/s India Bulls Housing Finance Limited on 12.5.2023 by way of a registered transfer deed for a consideration of Rs.551 crores, although its value is Rs.2000 crores so as to cause financial loss to the U.P. Government. It is also alleged that Sumit Kumar Narwar by exercising undue influence and extending threats has got the agreement entered into between Shipra Mall and Shipra Estate and other

companies cancelled. The FIR further recites that a securitization appeal raising such issue is pending before the Debt Recovery Tribunal at Lucknow. It is also alleged that in addition to the property kept as mortgaged certain other property has also been encroached by M/s Himri Estate Private Limited, though such property was not specifically kept as mortgage with M/s India Bulls Pvt. Ltd. Allegations are also made that the accused persons are influential and despite a complaint made to the concerned Police Station Incharge no action has been taken and, therefore, request has been made to the Chief Minister of the State of U.P. to take appropriate steps to ensure justice for the informant.

6. The first information report is challenged by the two petitioners namely M/s Himri Estate Private Limited and its officer-bearers (hereinafter referred to as the 'auction purchasers') as well as Smt. Reena Bagga authorized representative of M/s India Bulls Housing Finance Limited as well as M/s India Bulls Housing Finance Limited a non-banking finance company limited incorporated under the provisions of the Indian Companies Act, 1956 (hereinafter referred to as the 'Finance Company').

7. The petitioners state that Plot No. 9, Ahinsakhand, Indirapuram, District – Ghaziabad, on which Shipra Mall was established by M/s Shipra Hotel Private Limited, was kept as mortgage with the Finance Company in lieu of loan availed by M/s Shipra Hotel Private Limited and its sister concerns (hereinafter referred to as the 'borrower') of

approximately Rs.2000 crores. It is asserted that the borrower company has defaulted in repayment of loan amount to the finance company. It is thereafter that the finance company proceeded to recover its dues from the assets of the borrower company, which were kept as mortgage, for securing the loan.

8. According to petitioners about 16 loan agreements were entered into between the finance company and the borrower company details whereof are mentioned in para 30 of writ petition no. 11837 of 2023. It is also asserted in para 33 of the said petition that in order to secure the loan amount the borrower company has kept various assets as mortgage with the finance company which included Plot No. 9, Ahinsakhand, Indirapuram, District Ghaziabad on which exists the Shipra Mall.

9. It is further stated that on account of default in repayment of loan by borrower company, proceedings were initiated under the SARFAESI Act with issuance of a notice under Section 13(2) of the SARFAESI Act on 28.7.2021 in respect of the property in question i.e. Plot No.9, Ahinsakhand, Indirapuram, District Ghaziabad. This notice was acknowledged by the borrower company vide its reply dated 25.9.2021. Jurisdiction under Section 14 of the SARFAESI Act was then invoked by the competent authority who passed an order on 30.5.2022 permitting taking of possession of the property in question i.e. Plot No.9, Ahinsakhand, Indirapuram, District Ghaziabad.

10. Action taken under Section 14 of the SARFAESI Act

was challenged by the borrower company by filing writ petition no. 22594 of 2022 before this Court. A Co-ordinate Bench by a detailed judgment dismissed the writ petition on 25th November, 2022. Aggrieved by this order, the M/s Shipra Hotels Limited and another approached the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No. 40574 of 2022, which was dismissed as withdrawn on 28th February, 2023, vide following orders:-

- "1. Upon being mentioned, taken on board.*
- 2. Mr Sajan Poovayya, senior counsel appearing on behalf of the petitioners, states that the petitioners are advised to withdraw the Special Leave Petition so as to pursue the alternate remedy which is available under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 before the Debts Recovery Tribunal.*
- 3. Since the Special Leave Petition is not pressed, we clarify that this Court has not expressed any opinion on the merits.*
- 4. The Special Leave Petition is dismissed as withdrawn."*

11. The borrower company also invoked arbitration proceedings and an order came to be passed by the learned arbitrator on 30.8.2022 staying the auction proceedings initiated by the finance company. This order was challenged before the Delhi High Court in arbitration appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The appeal was allowed by the Delhi High Court on 21st February, 2023. The Delhi High Court set aside the order passed by the Arbitrator and allowed the auction proceedings to proceed as per law.

12. The order of Delhi High Court was then challenged by the borrower company before the Supreme Court and the SLP was withdrawn vide following orders on 24.4.2023:-

*"1. Mr CA Sundaram, senior counsel appearing on behalf of the petitioner seeks liberty to withdraw the Special Leave Petition on the ground that the petitioner has been advised to pursue its remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.*

*2. The Special Leave Petition is dismissed as withdrawn with liberty to pursue remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act."*

13. Our attention has been invited by Sri Anoop Trivedi appearing for the petitioner in writ petition no. 11837 of 2023 to the assertions made in para 12 of the writ petition which refers to various steps taken by M/s Shipra Hotel for challenging the proceedings initiated under the SARFAESI Act. For the sake of convenience we reproduce the chart contained in para 12 of the writ petition:-

| Sl. No. | Case No. | Particulars                                    | Forum               | Status   |
|---------|----------|--|---------------------|--|
|         |          | Application under Section 17 of the A & C Act. | Ld. Sole Arbitrator | The Application was allowed by the Ld. Sole Arbitrator vide Order dated 30.08.2022, which was set aside in Appeal by the Hon'ble Delhi High Court vide Order dated 21.02.2023. The Shipra Group has preferred SLP(C) No. 7084-7089/2023 against the Order dated 21.02.2023 which has also been dismissed as withdrawn by Shipra Group vide order dated 24.04.2023. |
| 2.      | W.P.(C)  | Writ Petition under                            | This                | Dismissed vide   |

|    |   |   |                        |   |
|----|---|---|------------------------|---|
|    | No. 22594/2022                          | Article 226 of the Constitution of India challenging the Order of the Ld. District Magistrate dated 30.05.2022.                               | Hon'ble Court          | Order dated 25.11.2022.   |
| 3. | SLP(C) Diary No. 40574/2022             | Special Leave Petition under Article 136 of the Constitution of India challenging the Order dated 25.11.2022.                                 | Hon'ble Supreme Court  | Dismissed as withdrawn Order dated 28.02.2023.                              |
| 4. | S.A. No. 906/2022                       | Securitization Application dated 17.12.2022 under Section 17 of the SARFAESI Act challenging the possession and sale notice dated 12.12.2022. | Debt Recovery Tribunal | Dismissed vide Order dated 16.03.2023.                                      |
| 5. | Matters under Article 227 No. 1501/2023 | Writ Petition under Article 227 of the Constitution of India challenging the Order dated 16.03.2023 passed by the Ld. DRT                     | This Hon'ble Court     | Dismissed vide Order dated 28.03.2023                                       |
| 6. | S.A. No. 248/2023                       | Securitization Application dated 22.03.2023 under Section 17 of the SARFAESI Act challenging the possession.                                  | Debt Recovery Tribunal | Dismissed vide Orders dated 19.04.2023                                      |
| 7. | S.A. No. 337/2023                       | Securitization Application under Section 17 of the SARFAESI Act challenging the sale notice dated 08.04.2023.                                 | Debt Recovery Tribunal | Pending adjudication of maintainability. However, no stay has been granted. |
| 8. | S.A. No. 469/2023                       | Securitization Application under Section 17 of the SARFAESI Act challenging the sale dated 27.04.2023 and valuation.                          | Debt Recovery Tribunal | Pending adjudication. However, no stay has been granted.                    |



14. Various steps in accordance with the provisions of the SARFAESI Act were then undertaken by the finance company against the borrower company in respect of property in question. Notice of sale in terms of Rule 8(6) read with Rule 9(1) and its proviso to the Security Interest (Enforcement) Rules, 2002 was issued lastly on 8.4.2023. E-auction notice was published in newspaper on 11.4.2023 in respect of Plot No.9, Ahinsakhand, Indirapuram, District Ghaziabad (excluding specified shops on lower ground floor and first floor) under the Rules framed under the SARFAESI Act. It is asserted that pursuant to these lawful proceedings initiated under the SARFAESI Act the property popularly known as Shipra Mall has been transferred by the finance company in favour of M/s Himri Estate Private Limited (the auction purchaser). The petitioners have also brought on record the sale certificate issued in favour of the auction purchaser on 10.5.2023. It is also pointed out that the proceedings initiated under the SARFAESI Act have been challenged by the defaulter-borrower company by instituting Securitization Application No. 906 of 2022 and the same is engaging attention of DRT at Lucknow. It is submitted that lawful proceedings initiated under the SARFAESI Act cannot be assailed at the instance of a defaulter by lodging an FIR as the same amounts to an abuse of the process of law.

15. So far as the allegation in the FIR with regard to petitioners having encroached upon other property of M/s Shipra Group is concerned, it is argued vehemently on

behalf of the petitioners that neither the property allegedly encroached upon has been specified, nor any details in that regard have been mentioned. It is submitted that the auction purchaser has taken possession of the properties of the borrower on Plot No.9, Ahinsakhand, Indirapuram, District Ghaziabad popularly known as Shipra Mall. It is pointed out that there is no allegation of trespass and the FIR has not even been registered under Section 441 IPC. Contention is that in the absence of any details furnished in the FIR with regard to the property allegedly encroached upon it would not be open for the petitioners to effectively controvert such vague allegations. It is nevertheless asserted that the petitioners have not encroached upon any land and its possession is restricted only to the property which has been validly obtained in public auction, for lawful consideration, under the provisions of the SARFAESI Act.

16. The first information report in the present case has been lodged by the first informant on behalf of the defaulter-borrower company i.e. M/s Shipra Group. The assertions made in the writ that finance to the tune of Rs. 2000 crores has been availed by the borrower company from the finance company i.e. petitioner no.2, in Writ Petition No.11837 of 2023, remains undisputed. The further assertion that the borrower company i.e. M/s Shipra Group has failed to repay the loan availed from the finance company i.e. M/s India Bulls Housing Finance Ltd. equally remains undisputed. Records further reveal that on account of failure on part of the borrower company to

repay the loan availed by it various steps have been taken by the finance company i.e. M/s India Bulls Housing Finance Ltd. by invoking the provisions of the SARFAESI Act. A notice under Section 13(2) of the SARFAESI Act has been issued on 28.7.2021. This notice is followed with steps taken under Section 13(4) of the Act. Auction notices have also been issued pursuant to which the property identified as Plot No. 9, (except specified shops on the lower ground floor and first floor) has been transferred by the finance company i.e. M/s India Bulls Housing Finance Ltd. to M/s Himri Estate Private Limited. Sale certificate is also on record, which would go to show that the property has been transferred on a consideration of Rs. 551 crores. Stamp duty has also been paid of Rs. 38,57,00000/-. It is otherwise acknowledged by the informant that action taken under the SARFAESI Act resulting in transfer of property in question to M/s Himri Estate (auction purchaser) is subject matter of challenge in Securitization Application No. 906 of 2022.

17. It is also reflected from the materials placed on record that repeated attempts of the defaulter-borrower company M/s Shipra Hotel Limited to assail the ongoing auction proceedings before the competent forum, where such issues can be examined, have not succeeded, so far. The matter is otherwise sub-judice before the Debt Recovery Tribunal at Lucknow. It is in this context that this Court is required to consider as to whether proceedings initiated under the SARFAESI Act, 2002 culminating in auction of secured assets can be questioned by lodging an

FIR?

18. Records reveal that the secured asset i.e. Plot No.9, Ahinsakhand, Indirapuram, District Ghaziabad has been transferred to the auction purchaser M/s Himri Estate Pvt. Ltd. by the secured creditor M/s India Bulls Housing Finance Ltd. pursuant to the proceedings undertaken under the SARFAESI Act. Though the defaulter company has instituted various proceedings before different forums to stall the auction proceedings but without any success. The matter is otherwise pending before the competent forum i.e. the Debt Recovery Tribunal, Lucknow. Such auction proceedings conducted under the SARFAESI Act cannot be allowed to be challenged by lodging an FIR as it would amount to opening a new avenue for the defaulter to challenge the auction proceedings, which is not countenanced in law. We are, therefore, of the considered opinion that the FIR at the instance of the defaulter company on the allegations contained therein cannot be allowed to proceed any further as it would amount to an abuse of the process of law.

19. Once that be so, we fail to understand as to how a first information report can be lodged in respect of various transactions undertaken by the finance company culminating in transfer of property in question to the auction purchaser. We are, therefore, of the view that impugned FIR could not have been lodged at the instance of the defaulter company which is already contesting this matter before DRT at Lucknow. In the event we allow first

information report of the present kind to be entertained, it would only enable the defaulter-borrower company getting another avenue to challenge the auction proceedings, on the pretext of criminal action, against the finance company or the auction purchasers.

20. The issue as to whether legality of the auction proceedings undertaken pursuant to SARFAESI Act could be questioned by lodging an FIR came to be examined by the Hon'ble Supreme Court in K. Virupaksha and Anr. vs. State of Karnataka and Anr. (2020) 4 SCC 440. The High Court of Karnataka repelled the challenge laid to the initiation of criminal action in respect of auction proceedings under the SARFAESI Act, at the instance of the defaulter-borrower. In appeal, the Supreme Court noticed the facts of the case in para 14 and after scrutinizing the scope of SARFAESI Act proceeded to hold that issues such as valuation of property or conduct of auction can be examined only in proceedings before the DRT. Consequently, the criminal proceedings initiated in respect of such issues came to be quashed. Para 14 to 18.1 of the judgment in Virupaksha (supra) are reproduced hereinafter:-

*"14. The issue, however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset, the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the parties. The complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by Canara Bank in that regard. The loan admittedly was sanctioned on 16-3-2009. When at that stage the amount was released and if any amount was*

*withheld, the complainant was required to take appropriate action at that point in time and avail his remedy. On the other hand, the complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on 15-1-2013. Initially, the issue raised was only with regard to the undervaluation of the property when it was brought to sale. On that aspect, as taken note, the writ proceedings were filed and the learned Single Judge having examined, though did not find merit had reserved liberty to raise it before DRT, which option is also availed. It is only, thereafter, the impugned complaint was filed on 20-5-2016.*

*15. The Sarfaesi Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the Sarfaesi Act. This view is fortified by the decision of this Court in Indian Overseas Bank v. Ashok Saw Mill [Indian Overseas Bank v. Ashok Saw Mill, (2009) 8 SCC 366 : (2009) 3 SCC (Civ) 403] wherein it is held as hereunder : (SCC pp. 375-76, paras 34-37)*

*"34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.*

*35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.*

*36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues,*

*safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.*

*37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."*

*(emphasis supplied)*

*16. We reiterate, the action taken by the Banks under the Sarfaesi Act is neither unquestionable nor treated as sacrosanct under all circumstances but if there is discrepancy in the manner the Bank has proceeded it will always be open to assail it in the forum provided. Though in the instant case, the application filed by the complainant before DRT has been dismissed and Appeal No. 523 of 2015 filed before DRAT is also stated to be dismissed the appellants ought to have availed the remedy diligently. In that direction, the further remedy by approaching the High Court to assail the order of DRT and DRAT is also available in appropriate cases. Instead the petitioner after dismissal of the application before the DRT filed the impugned complaint which appears to be an intimidatory tactic and an afterthought which is an abuse of the process of law. In the matter of present nature, if the grievance as put forth is taken note of and if the same is allowed to be agitated through a complaint filed at this point in time and if the investigation is allowed to continue it would amount to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the learned Single Judge and the Division Bench in the writ proceedings by the High Court and the orders passed by the competent court under the Sarfaesi Act which is neither desirable nor permissible and the banking system cannot be allowed to be held to ransom by such intimidation. Therefore, the present case is a fit case wherein the extraordinary power is necessary to be invoked and exercised.*

*17. The appellants herein had also referred to the provision as contained in Section 32 of the Sarfaesi Act which provides for the immunity from prosecution since protection is provided thereunder for the action taken in good faith. The learned Senior Counsel for the complainant has in that regard referred to the decision of this Court in Army Headquarters v. CBI [Army Headquarters v. CBI, (2012) 6 SCC 228 : (2012) 3 SCC (Cri) 88] to contend that the defence relating to good faith and public good are questions of fact and they are required to be proved by adducing evidence. Though on the proposition of law as enunciated therein there could be no cavil, that aspect of the matter is also an aspect which can be examined in the proceedings provided under the Sarfaesi Act. In a circumstance, where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the investigating officer or the criminal court would not be justified.*

*18. In that view, for all the reasons stated above, we pass the following:*

*Order*

*18.1. The complaint bearing PC No. 389 of 2016 and the order dated 20-5-2016 passed therein as also FIR No. 0152 of 2016 insofar as the appellants herein are concerned stand quashed concerned."*

21. In Priyanka Srivastava vs. State of U.P. (2015) 6 SCC 287 the Supreme Court considered the entertainment of application under Section 156(3) Cr.P.C. in respect of proceedings initiated under the SARFAESI Act. The Hon'ble Court emphasized that a separate procedure existed in respect of SARFAESI Act proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and, therefore, the Magistrate must show an attitude of care, caution and circumspection while entertaining application under Section 156(3) Cr.P.C. Section 32 of the SARFAESI Act, 2002 has been referred to and relied upon by the Court in para 32 and 33 of the judgment in Priyanka Srivastava (supra) which are reproduced hereinafter:-



*"32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.*

*33. At this juncture, we may fruitfully refer to Section 32 of the Sarfaesi Act, which reads as follows:-*

*"32. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."*

*In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasize, the legislative mandate has to be kept in mind."*

22. We have carefully perused the allegations made in the impugned First Information Report which are in respect of transfer of secured asset in favour of auction purchaser by the secured creditor/finance company under the SARFAESI Act. Allegations that proceedings have not been lawfully undertaken or that the secured asset is undervalued are aspects which can only be examined in pending proceedings before the Debt Recovery Tribunal. The defaulter company has already approached the Supreme Court twice and such proceedings were withdrawn with liberty to approach the Debt Recovery Tribunal. The defaulter company has already approached the DRT, Lucknow where the matter is pending. Question as to whether the auction purchaser has exceeded its possession beyond the property transferred in auction purchase is also

open for examination before the DRT, Lucknow. Such issues are otherwise civil in nature and cannot be allowed to be raised by lodging an First Information Report. Vague and unsubstantiated ancillary allegations made of encroachment, beyond the transferred secured asset, or alleged irregularity in conduct of auction etc. cannot be allowed to be raised by lodging an FIR and thereby vest jurisdiction in the police regarding civil issues which are required to be adjudicated exclusively by the DRT or the civil court. The tendency of the defaulter to invoke criminal proceedings for resisting coercive action under the SARFAESI Act has to be curbed. The Parliamentary vision of vesting exclusive jurisdiction in specialized tribunal viz DRT, in respect of banking transactions relating to loan, debt etc. has to be respected. Criminal proceedings cannot be pressed into action at the instance of defaulter to scuttle proceedings under the SARFAESI Act on issues exclusively triable by DRT.

23. For the reasons recorded above, these two petitions succeed and are allowed. The First Information Report, dated 22.07.2023, registered in Case Crime No.611 of 2023, under Sections 420, 120-B of IPC and Section 82 of Registration Act, 1908, Police Station - Kavi Nagar, District - Ghaziabad is quashed.

**Order Date:-** 15.4.2024

Ranjeet Sahu/RA

(Ashutosh Srivastava, J.)

(Ashwani Kumar Mishra, J.)