

Borrower cannot discharge its liability by paying only the reserve price set in a public auction or the highest bid amount if bank dues are more.

In the case of *Bank of Baroda v. M/s Karwa Trading Company & Anr.*,¹ the Supreme Court held that a borrower cannot redeem the mortgaged property put up for public auction by the bank by paying only the reserve price for the auction or the highest bid amount if such payment would not discharge the liability of the borrower in full.

Brief Facts:

1. Bank of Baroda (“**Appellant**”) had granted credit facilities of INR 1,95,00,000 to M/s. Karwa Trading Company as the borrower (“**Respondent**”) against two mortgaged properties, an industrial plot and a residential property. The Respondent had failed to repay the credit facilities and its account was classified as a non-performing asset by the Appellant. The outstanding amounts were INR 1,85,37,218.80.
2. The Appellant also took possession of the mortgaged residential property in accordance with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”). The residential property was put up for sale by public auction at a reserve price at INR 48,65,000.
3. The said auction was challenged by the Respondent before the Debt Recovery Tribunal (“**DRT**”). The DRT passed an interim order directing that if the Respondent deposits the reserve price in two instalments within a specified time, then the Appellant will need to transfer possession of the property along with the title deed to the Respondent. The Respondent deposited the reserve price as per the interim order. The Appellant preferred an appeal before the Debt Recovery Appellate Tribunal (“**DRAT**”) in relation to the order of DRT which appeal was dismissed by the DRAT.
4. Subsequently, the order of the DRAT was challenged before the single judge bench of the Rajasthan High Court (“**High Court**”). The single judge bench of the High Court set aside the orders of DRT as well as DRAT and held them to be contrary to Section 13(8) of the SARFAESI Act. The said section *inter alia* provides that the secured asset must not be sold/transferred by the secured creditor where the amount dues together with all costs and expenses incurred is tendered by the borrower prior to the date of publication of notice for public auction/invitation of quotations/tender for transfer by lease of sale of secured assets. This decision of the single judge was further appealed by the Respondent before the division bench of the High Court. The division bench set aside the order of the single judge and directed the Appellant to release the residential property to the Respondent for a total sum of INR 65,65,000.

Issue:

Whether the mortgaged property could be redeemed by the Respondent on a payment of the reserve price or the highest bid amount in the public auction when the outstanding dues are not fully satisfied by such payment?

¹ Civil Appeal No. 363 of 2022, Supreme Court of India, judgement dated February 10, 2022.

Analysis and findings:

The Supreme Court quashing the judgement passed by the division bench of the High Court and restoring the order passed by the single judge of the High Court, held that the mortgaged property could not be redeemed by the Respondent on a payment of the reserve price or the highest bid amount for the following reasons:

1. The impugned judgment and order passed by the Division Bench of the High Court directing to release the mortgaged property and to handover on payment of INR 65,65,000 is contrary to Section 13(8) of the SARFAESI Act as the Respondent will not be discharging its liability in full under the credit facilities together with costs by such payment.
2. Even if the Appellant would have sold the property to a third party pursuant to an auction for a consideration of INR 71,00,000, the Respondent would continue to be liable to pay the residual outstanding dues and would not have been discharged in full of its liabilities under the credit facilities.
3. The Appellant can be restrained from selling the mortgaged property at the auction only if the Respondent repaid the entire dues together with costs to the Appellant.

Conclusion:

The Supreme Court has observed that the borrower needs to pay all outstanding dues to redeem the secured asset under Section 13(8) of the SARFAESI Act. A borrower cannot redeem the mortgaged property by just paying the reserve price for the auction or the highest bid amount as per the public auction conducted pursuant to the SARFAESI Act.

The Supreme Court has again highlighted the legal principle that the liability of the borrower continues until all the outstanding dues of a borrower are satisfied in full either by payment by the borrower or by enforcement of security on the assets of a borrower. The borrower will continue to be liable to pay the amounts that are outstanding even after the sale of the secured asset if such security enforcement does not satisfy the liability of the borrower in full.

For more details, please contact km@jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.