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Exercise of powers by the Supreme Court under Article 142 cannot ignore substantive statutory provisions.

On October 4, 2023, a 2 (two) judge bench of the Hon'ble Supreme Court of India ("Supreme Court") in the case of *Union Bank of India v. Rajat Infrastructure Pvt. Ltd and Sunview Assets Pvt Ltd.*¹ held that the powers of the Supreme Court under Article 142 of the Constitution of India, 1950 ("Constitution"), being inherent in nature, are complementary to those powers which are specifically conferred by statute.

Brief Facts

1. Zoom Developers Pvt. Ltd. and Zoom Vallabh Steel Ltd. (collectively referred as "**Borrowers**") had availed credit facilities / loan from Union Bank of India ("**Bank**"). To secure the credit facilities, Rajat Infrastructure Pvt. Ltd. ("**Rajat**") had mortgaged a property owned by it in favour of the Bank ("**Secured Asset**").
2. As the Borrowers failed to repay the credit facilities, the Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") were initiated by the Bank. Thereafter various proceedings ensued between the Bank and Rajat and the Borrowers.
3. Further, in the auction conducted by the Bank, Sunview Assets Pvt. Ltd. ("**Sunview**") was declared as the highest bidder for an amount of INR 65,62,00,000 (Indian Rupees sixty five crore sixty two lakh) ("**Total Sale Consideration**").
4. Aggrieved by an observation passed by the Bombay High Court in a writ petition filed by Rajat that there was no requirement of a pre-deposit before the Debts Recovery Appellate Tribunal ("**DRAT**"), the Bank and Sunview filed their respective civil appeals. By way of a common order dated March 2, 2020, the Supreme Court allowed the appeals and set aside the orders passed by the Bombay High Court. In the common order, the Supreme Court extended the time given to Sunview to deposit the Total Sale Consideration till March 20, 2020.
5. Thereafter, Sunview filed a Miscellaneous Application² seeking extension of time to pay the balance Total Sale Consideration amounting to INR 49,21,50,000 (Indian Rupees forty nine crore twenty one lakh fifty thousand), on the ground that, due to the impact of the Covid-19 pandemic, Sunview was unable to deposit the same. The Supreme Court vide an order dated March 20, 2020 granted an extension to Sunview till April 30, 2020 and stated that no further extension would be granted.

¹ Miscellaneous Application No. 1735 of 2022 in Civil Appeal No. 1902 OF 2020.

² Miscellaneous Application No. 894 of 2020 in Civil Appeal No. 1902 of 2020

6. Sunview filed another Miscellaneous Application invoking powers of the Supreme Court under Article 142 of the Constitution seeking extension of time to deposit the balance Total Sale Consideration amounting to INR 34,41,50,000 (Indian Rupees thirty four crore forty one lakh fifty thousand).
7. On July 11, 2022, the Supreme Court passed an interim order in the above applications wherein the Supreme Court refused to pass any order extending the time or any order refusing to extend the time for Sunview to make payment of the balance Total Sale Consideration. In the order, the Supreme Court recorded that it was open for Sunview to make the payment prior to the next date. Accordingly, on July 22, 2022, Sunview deposited an amount of RS. 34,41,50,000 (Indian Rupees thirty four crore forty one lakh fifty thousand) after deducting 1% TDS of the Total Sale Consideration. Thereafter, Sunview made a payment of Rs. 7,17,02,859.45 (Indian Rupees seven crore seventeen lakh two thousand eighty fifty nine and paise forty five) towards interest amount, which was acknowledged by the Bank *vide* its letter dated August 26, 2022.

Post the above and being aggrieved by the Bank's failure to confirm the sale of the Secured Asset in favour of Sunview, Sunview filed a Miscellaneous Application No. 1126 of 2022 under Article 142 of the Constitution seeking directions against the Bank to confirm the sale and issue sale certificate for the Secured Asset, in favour of Rajat.

Issue

Whether the Supreme Court could invoke the provisions of Article 142 of the Constitution which would in effect override substantive provisions of a statute.

Analysis and Findings of the Supreme Court

Whilst dismissing the Miscellaneous Application, the Supreme Court held as follows:

1. The SARFAESI Act read with the SARFAESI Rules, more specifically Rule 9(4), requires the successful purchaser to pay the balance consideration to the authorised officer of the secured creditor within 3 (three) months from the date of confirmation of the sale. In the present case, taking into account the covid related extension granted to Sunview, the balance consideration was to be paid by April 30, 2022. However, Sunview failed to comply.
2. Sunview's plea that the Supreme Court ought to extend the time limit for payment of balance consideration by invoking Article 142 of the Constitution and/or Section 148 of the CPC was rejected by the Supreme Court. Whilst invoking Article 142 of the Constitution, the Supreme Court cannot ignore the substantive provisions of a statute.
3. The inherent powers under Article 142 of the Constitution must complement the powers which are specifically conferred on courts/tribunals by statute. Albeit the powers under Article 142 of the Constitution are of wide amplitude, such powers cannot be used to supplant substantive provisions of law.
4. Reliance was placed on its decision in *Supreme Court Bar Association v. Union of India & Anr.*³, wherein it was held that Article 142 of the Constitution cannot be used to introduce a new edifice in ignorance of express statutory provisions. What cannot be achieved directly, cannot be sought to be achieved indirectly by invoking Article 142 of the Constitution.

Conclusion

By way of the judgment, the Supreme Court has delineated the extent to which Article 142 of the Constitution can be invoked. As the language of Article 142 of the Constitution suggests, the plenary powers are to be invoked "to meet the ends of justice". To meet the ends of justice can never be interpreted to mean that its powers can be used by the Supreme Court to override statutory provisions. If powers under Article 142 of the Constitution are invoked to

³ (1998) 4 SCC 409

override statutory provisions (such as timelines under the SARFAESI Act and SARFAESI Rules), then it would have the effect of reducing statutory provisions to a dead letter.

Whilst there has been an increasing trend by the Supreme Court in invoking Article 142 of the Constitution, it has always been circumspect in invoking Article 142 of the Constitution and must continue to do so.

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This Prism has been prepared by:











Varghese Thomas
Partner



Yohaann Limathwalla
Principal Associate



Ahsan Allana
Senior Associate

		
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