

## IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

### **Appeal Dy. No. 347/2022**

Canara Bank (erstwhile Syndicate Bank), Main Branch,  
Capital Tower, Block-B, Frazer Road, Patna, Bihar, Pin-  
800017.

.....Appellant

Versus

1. M/s Maruti Automobiles, Shop No. 2, Rani Plaza,  
Exhibition Road, Patna-800001 through its proprietor,  
Mansoor Ansari Ashrafi, S/o Mohammad Kasim Ansari.
2. Mansoor Ansari Ashrafi, S/o Late Mohammad Kasim  
Ansari, R/o 504, Maqbool Apartment, Exhibition Road,  
Patna-800001.
3. Shahzada Rafi Ahmad, S/o Dr. Md. Yunus, R/o 504,  
Maqbool Apartment, Exhibition Road, Patna-800001.
4. Abid Ali, S/o Ashim Ali, R/o 501 Maqbool Apartment,  
Exhibition Road, Patna- 800001.
5. Harsh Chopra, S/o Ashok Chopra, R/o Solar House,  
Ground Floor, Brindavan Kunj, Exhibition Road, P.S.  
Gandhi Maidan, Patna-800001.

.....Respondents

### **Appeal Dy. No. 367/2022**

Harsh Chopra, S/o Ashok Chopra, R/o Solar House, Ground  
Floor, Brindavan Kunj, Exhibition Road, P.S. Gandhi Maidan,  
Patna-800001.

.....Appellant

Versus

1. M/s Maruti Automobiles, Shop No. 2, Rani Plaza,  
Exhibition Road, Patna-800001 through its proprietor,  
Mansoor Ansari Ashrafi, S/o Mohammad Kasim Ansari.
2. Mansoor Ansari Ashrafi, S/o Late Mohammad Kasim  
Ansari, R/o 504, Maqbool Apartment, Exhibition Road,  
Patna-800001.
3. Shahzada Rafi Ahmad, S/o Dr. Md. Yunus, R/o 504,  
Maqbool Apartment, Exhibition Road, Patna-800001.
4. Abid Ali, S/o Ashim Ali, R/o 501, Maqbool Apartment,  
Exhibition Road, Patna- 800001.
5. Canara Bank (erstwhile Syndicate Bank), Main Branch,  
Capital Tower, Block-B, Frazer Road, Patna, Bihar-  
800017.

.....Respondents

### **Advocates, who appeared in this case:**

For the Bank  
For the auction purchaser  
For the borrowers

Shri Maneesh Mehrotra, Advocate  
Shri Adarsh Bhushan, Advocate  
Shri V. K. Shukla, Advocate

**JUDGMENT**

**Date of Pronouncement: 17.07.2025**

**JUSTICE R. D. KHARE, CHAIRPERSON**

1. The above-mentioned appeals have been filed under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as "the RDB Act, 1993") against the judgment dated 20.05.2022, wherein the T.A. No. 01/2021 filed by the appellant-Bank has been dismissed.
2. The brief facts of the matter are that the appellant-Bank had granted various credit facilities to the respondent no. 1. In order to secure the said facilities, the respondents no. 2 to 4 stood as personal guarantors and respondent nos. 1 to 4 created an equitable mortgage over their property in question by depositing title deeds with the appellant-Bank. Since respondent no. 1-borrower failed to maintain the financial discipline, therefore, the loan accounts were classified as NPA and a demand notice dated 14.09.2009 under Section 13(2) of the SARFAESI Act was issued followed by the possession notice dated 03.10.2009 for all the three properties mortgaged with the Bank and the same was published in the newspapers on 10.10.2009.
3. The respondents-borrowers challenged the proceedings of the Bank by filing S. A. No. 133/2011 before the Tribunal below. After taking physical possession of the properties in question on 18.04.2011, a sale notice dated 30.04.2011 was issued by the Bank scheduling the auction of the properties in question on 31.05.2011 and the properties were sold for a sum Rs. 66.75 lacs, out of which Rs. 16,62,271.49 was adjusted in the loan account of Maruti Automobiles and Rs. 50,12,728.51 was adjusted in the loan account of Maruti Stores. After receipt of entire sale consideration, the appellant-Bank issued sale certificate and

handed the physical possession of the said property to the respondent no. 5-auction purchaser on 16.06.2011.

4. The auction sale dated 31.05.2011 was challenged by the respondents-borrowers by filing an interim application in the pending S.A. before the Tribunal below on the ground that the property was sold undervalued, which was allowed. The said S.A. was disposed off by the Tribunal below vide order dated 26.03.2012 by the Tribunal below directing the borrowers to pay the actual dues along with interest within 7 days of valuation of property through an expert by the Bank. The borrower was also directed to pay Rs. 10.00 lacs compensation along with 9 % interest, cost of modification and 5% penalty to the auction purchaser and cost of paper publication, legal expenses and costs, against which the respondents-borrowers preferred an Appeal No. 68 of 2012 before Appellate Tribunal, which was disposed off vide order dated 08.07.2013 with a direction upon the appellant-Bank to intimate the full and final amount recoverable by it within 15 days and further directed the appellants to deposit the same within 60 days with the Bank. It was also directed to refund the amount of Rs. 50.00 lacs, which was deposited with DRAT, Calcutta, to the Bank. It was further stipulated that in case the appellant fails to deposit the amount within 60 days, the Bank shall be free to auction the property in question. In compliance of the said order, the appellant-Bank furnished the statement of account with calculation chart on 20.07.2013 and demanded an amount of Rs. 2,36,11,095/-, as total outstanding dues payable in 19.07.2013 in both the accounts, out of which Rs. 98,67,127/- was against the account of Maruti Automobiles and the remaining amount of Rs. 1,37,43,968/- against Maruti Stores.

5. The respondents-borrowers thereafter filed a Misc. Application No. 345 of 2013 before this Tribunal seeking modification of the order dated 08.07.2013 passed in Appeal No. 68 of 2012. The Appellate Tribunal vide order dated 03.10.2013 modified the said order and held that the total recoverable amount from the appellant is Rs. 76.00 lacs, which includes the interest as on 13.09.2013 and after adjusting the amount deposited by the appellant, the remaining amount was to be deposited on or before 04.12.2013 as undertaken by the appellant.
6. Against the aforesaid order dated 03.10.2013 passed by this Appellate Tribunal, the appellant-Bank filed a Writ Petition No. 24462 of 2013 before the Hon'ble High Court at Patna, which was disposed off vide order dated 10.08.2016 by modifying the said order to the effect of the outstanding dues of Rs. 99,10,863.66/- instead of Rs. 76.00 lacs against the respondents. Against the said order of the Hon'ble Single Judge, the respondent no. 2-borrower filed a Letters Patent Appeal No. 2341 of 2016 before the Division Bench of the Hon'ble High Court at Patna, which was dismissed vide order dated 09.05.2018.
7. It appears that in the meantime, the appellant-Bank proceeded for the recovery of its dues and filed Original Application No. 34 of 2014 on 27.02.2014 for Rs. 82,63,120.33/- as on 31.01.2014 along with future interest @ 19% per annum. During the pendency of the said O.A., an impleadment application was filed, which was allowed by the Tribunal below and the auction purchaser was impleaded as respondent no. 5.
8. Since the post of Presiding Officer, DRT, Patna was lying vacant, therefore, a Transfer Petition was moved by the borrowers, which was allowed and consequently, the O.A.

No. 34 of 2014 was transferred to DRT, Ranchi, which was renumbered as T.A. No. 01 of 2021.

9. The Tribunal below vide order impugned has dismissed the claim of the appellant-Bank holding that the entire outstanding amount has already been deposited by the respondents-borrowers with the appellant-Bank and directed the Bank to restore the physical possession of the mortgaged property to the borrowers within 30 days. Being aggrieved by the said order, the Appeal Dy. No. 347/2022 has been filed by the appellant-Bank and the Appeal Dy. No. 367/2022 by the auction purchaser.
10. Learned counsel for the appellant has referred to page 58 of the paper book, which is fact of the present case. It was contended that the loan of Rs. 21.00 lacs was advanced in the year 2002 for the commercial purpose. It was further contended that when the financial discipline was not maintained by the respondents-borrowers, the account was classified as NPA on 29.08.2003 and thereafter, a demand notice was issued under section 13(2) of the SARFAESI Act for a sum of Rs. 24,37,233/-. It was further contended that the respondents-borrowers approached the Bank for one time settlement of all the three accounts at Rs. 25.00 lacs along with upfront amount of Rs. 2.50 lacs to show his bona fide and the same was agreed by the Bank at Rs. 28.50 lacs for the said accounts, but the respondents-borrowers failed to comply with the same. Thus the process of one time settlement was cancelled on default of the respondents-borrowers and consequently, a notice dated 14.09.2009 under section 13(2) of the SARFAESI Act was again issued to the borrowers. Thereafter, the possession notice dated 03.10.2009 under section 13(4) was also issued in respect of the said loan accounts. Subsequently, the respondents-

borrowers deposited Rs. 4.00 lacs on 02.02.2010 with prayer for time to deposit the balance amount of Rs. 20.00 lacs.

11. The learned counsel further submitted that the possession notice was challenged at the same time before the Hon'ble High Court by filing CWJC No. 12640/2010, in which the respondents-borrowers had given an undertaking to deposit the entire due amount by 31.01.2011. The said writ petition was disposed off with direction to the respondents-borrowers to fulfill the undertaking and until then the coercive action initiated against him was stayed till 31.01.2011 and in case of failure, the Bank was given liberty to take coercive measures. It was further contended that an application being MJC No. 428 of 2011 was filed by the respondents-borrowers on 27.01.2011 for extension of time and the same was extended till 15.04.2011 on 23.03.2011. It was contended that since two cheques given by the respondents-borrowers as per his undertaking were dishonored, therefore, on 18.04.2011, the physical possession of the property was taken.
12. The learned counsel also submitted that when the respondents-borrowers failed to comply with the directions given earlier for settlement as per settlement proposal, the sale notice was published on 30.04.2011 scheduling the auction of the property in question on 31.05.2011 and the property was sold in favor of the auction purchaser, who was also petitioner in CWJC No. 64 of 2014.
13. Learned counsel further submitted that the sale was challenged by the respondents-borrowers by filing S.A. No. 133 of 2011, which was disposed off vide order dated 26.03.2012 with direction that if the respondents-borrowers wants to redeem the property in question, he may pay the

entire dues of the Bank along with interest as well as the other expenses. Against the said order, the respondents-borrowers filed an Appeal No. 68 of 2012 before the Debts Recovery Appellate Tribunal, Calcutta, which was subsequently transferred to this Appellate Tribunal and the same was renumbered as Appeal (T) No. 01 of 2013, which was disposed off vide order dated 08.07.2013, copy of which has been appended at page no. 46 of the paper book. It was further contended that a Misc. Application bearing No. 345 of 2013 was filed by the respondent-borrower for seeking certain clarification with regard to the outstanding amount, which was disposed off vide order dated 03.10.2013, in which the total dues were shown to be Rs. 76.00 lacs. Being aggrieved by the said order, CWJC No. 24462 of 2013 was filed by the Bank and CWJC No. 64 of 2014 was filed by the Auction purchaser before the Hon'ble High Court at Patna. Both the petitions were disposed off by the Hon'ble High Court, Patna vide judgment and order dated 10.08.2016 and quantified the amount of Rs. 43,10,863.63 and directed that the same would be paid towards full and final settlement of the dues outstanding against M/s Maruti Automobiles within the time as specified in the said order. In this regard, page no. 79 of the memo of appeal filed by the auction purchaser has been referred to.

14. The learned counsel also submitted that against the aforesaid order, LPA No. 2342 of 2016 was filed by the respondents-borrowers before the Hon'ble Division bench of the High Court, Patna, which was dismissed vide order dated 09.05.2018, copy of which has been appended as Annexure 7 at page 89 of the paper book. Thus the amount, which was quantified by the Hon'ble Single Judge, was confirmed by the Hon'ble Division Bench in the aforesaid

appeal. So there is no doubt that the respondent-borrower has not complied with the order passed by the Hon'ble High Court and the Tribunal below had dismissed the O.A. on its own findings and calculations and the respondent-borrower has not deposited the amount as quantified by the Hon'ble High Court. It was, therefore, prayed that the order impugned may be set aside and the appeal may be allowed.

15. Learned counsel for the appellant-auction purchaser has adopted the arguments as advanced on behalf of the learned counsel for the Bank and added that he is bonafide purchaser of the property in question and deposited the entire auction amount with the Bank and sale certificate has been issued and the possession of the property in question has been handed over to him, it was, therefore, prayed that the sale may not be disturbed at this stage.
16. Learned counsel for the respondents-borrowers has drawn the attention of this court to page no. 144 of his reply dated 14.09.2023 and has stated that the S.A. No. 133/2011, which was filed by the respondents-borrowers, was disposed off vide order dated 26.03.2012 with certain directions, which is at page no. 145 of the said reply. It was contended that against the said directions/observations, the respondent-borrower filed an Appeal no. 68/2012 before the Debts Recovery Appellate Tribunal, Calcutta, which was subsequently transferred to this Appellate Tribunal and renumbered as Appeal (T) No. 01/2013. It was further contended that the said appeal was disposed off vide order dated 08.07.2013, copy of which has been appended as annexure 24 at page no. 146 of the said reply, whereby it was directed that in case after intimation, the borrower does not deposit the amount within the period of 60 days, then the Bank shall be free to auction the property. It was

further contended that since the order passed by the Tribunal below setting aside the auction sale has never been challenged either by the Bank or by the auction purchaser, therefore, the said order has attained finality.

17. The learned counsel further submitted that when the Bank did not comply with the order dated 08.07.2013 passed by this Appellate Tribunal, then the respondent-borrower filed a modification application being M.A. No. 345 of 2013, which was disposed off with certain directions vide order dated 03.10.2013, copy of which has been appended as annexure no. 26 at page no. 153 of the said reply. The learned counsel has placed reliance at the last para of the said order, which is at page 155 of the said reply and has argued that this Tribunal has clarified the order dated 08.07.2013 as *"This also clarifies that the decision passed on 8.7.2013 and the order passed by the Tribunal today shall only be applicable in relation to the account for which the notice under section 13(2) of the SARFAESI Act, 2002 was given. This Tribunal has not adjudicated anything with respect to the default, if there is in relation to any other account as no notice under section 13(2) of the SARFAESI Act, 2002 was given by the Bank till now. On deposit of the said amount, the earlier direction passed by this Tribunal on 8.7.2013 shall be complied with by the Bank"* and the Tribunal has not asked anything for the loan of the other account and no notice under section 13(2) of the SARFAESI Act was given till that time.

18. The learned counsel further submitted that in compliance of the aforesaid order dated 3.10.2013, the respondents-borrowers approached the Appellant-Bank through an application dated 3.12.2013 along with two demand drafts amounting to Rs. 14.00 lacs, copies of which have been

appended as annexure no. 27 at page no. 157 and 158 of the said reply.

19. The learned counsel further submitted that only modification order dated 3.10.2013 was challenged by the Bank by filing CWJC No. 24462 of 2013 and by auction purchaser vide CWJC No. 64 of 2014. Both the petitions were clubbed and finally disposed off vide common judgment dated 10.8.2016. The learned counsel has referred to the last para of the said order at page no. 184 of the reply, wherein the amount payable has been quantified by the Hon'ble High Court. Against the said order, the respondent-borrower filed LPA No. 2341 of 2016, which was dismissed vide order dated 9.5.2018, copy of which has been appended at page no. 186 to 189 of the said reply.
20. The learned counsel also submitted that M.A. No. 111/2018 in Appeal (T) No. 1 of 2013 was filed by the respondent-borrower praying that amount deposited before this Tribunal may be released in favor of the Bank, which was disposed off vide order dated 31.05.2018 directing that the principle amount of Rs. 50.00 lacs along with accrued interest be paid to the Bank for crediting in the loan account of the appellant. Copy of the said order has been appended as annexure no. 31 at page no. 190 of the said reply. In compliance of the order dated 31.05.2018 of this Appellate Tribunal as well as the order dated 10.8.2016 of the Hon'ble High Court, an amount of Rs. 71,69,585/- was paid to the Bank vide demand draft no. 632719 dated 7.6.2018, copy of which has been placed at page no. 191 of the said reply.
21. The learned counsel also submitted that an amendment application was filed by the Bank in its pending O.A. No. 34/2014 before the Tribunal below, wherein the respondent-borrower filed his objection stating therein that

the entire amount has been paid and no further amount is to be paid. Copy of the said application has been filed as annexure no. 32 at page no. 192 of the said reply.

22. It was also canvassed that a Transfer application being 427/2021 was moved by the respondent-borrower before this Appellate Tribunal praying that the matter be transferred to DRT-Ranchi as DRT-Patna is vacant. The said application was disposed off vide order dated 25.11.2021 directing the Registrar, DRT, Patna to transfer the whole record along with I.As. immediately to the DRT, Ranchi. Copy of the order dated 25.11.2021 passed by this Appellate Tribunal has been appended as annexure no. 34 at page no. 205 of the said reply. It was further contended that the Appeal of the auction purchaser is not maintainable on the ground that the auction has been set aside by the Tribunal below, which has further been affirmed by this Appellate Tribunal in the year 2013 and the same has never been challenged either by the Bank or by the auction purchaser.
23. The learned counsel further contended that the proceeding was initiated under section 19 of the RDB Act, 1993, therefore, the auction purchaser, who has purchased the property in question under the SARFAESI Act, has no locus in the present case. It was further contended that against the demanded amount of Rs. 24,37,233/-, the respondent-borrower has deposited total amount of Rs. 99,10,860/-. It was thus prayed that both the appeals filed by the Bank and the Auction purchaser may be dismissed with cost directing the Bank to restore the possession of the property in question with the respondent-borrower.
24. In response, the learned counsel for the appellant submitted that the amount as stated has not been deposited by the

respondent-borrower and the order passed by the Hon'ble High Court with regard to quantification of amount has also not been complied with and the auction conducted by the Bank has never been set aside by any of the courts. It was thus prayed that the appeals filed by the Bank and the auction purchaser may be allowed.

25. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the respondents-borrowers challenged the demand notice, possession notice and sale notice before the Tribunal below by filing S.A. No. 133/2011, which was disposed off vide order dated 26.03.2012, whereby the auction sale was set aside and the Bank was directed to get fresh valuation report of the property in question from an approved expert engineer and further the borrowers were also directed to pay 9% interest and 5% penalty on auction amount to the auction purchaser as well as cost of Rs. 10.00 lacs, against the said order, the borrowers filed an appeal No. 68/2012 before the DRAT, Calcutta, which was subsequently transferred to this Appellate Tribunal and the case was renumbered as appeal (T) No. 01/2013. The said appeal was disposed off vide order dated 08.07.2013 with direction to the appellant-Bank to intimate the full amount, which was recoverable from the borrower and the amount was to be calculated on the basis of the contractual rate of interest and further direction was that the calculation of the amount and its intimation to the borrower was to be given by the Bank to the borrower within 15 days and the appellant thereafter within a period of 60 days from the date of receipt of an intimation shall deposit full amount. It was further stipulated that in case, after intimation, the appellant does not deposit the amount within the period of 60 days, then the Bank shall be free to auction the property

and after payment of the amount, the possession of the property shall be returned to the appellant.

26. It is to be held that neither the order dated 26.03.2012 passed by the Tribunal below in S.A. No. 133/2011 nor the order dated 08.07.2013 passed by this Tribunal in Appeal (T) No. 01/2013 have ever been challenged either by the Bank or by the auction purchaser before any Court or Tribunal, therefore, both the orders have attained finality.
27. It is stated that on receipt of the calculation of the amount in compliance of the order dated 08.07.2013 passed by this Appellate Tribunal, the borrower filed a misc. application Sr. No. 345/2013 before this Tribunal for clarification of the said order, which was disposed off vide order dated 03.10.2013 in the manner as under:-

"According to the Bank, the total amount which is recoverable from the appellant in compliance to the order passed by this Tribunal on 08.07.2013, comes to Rs. 76.00 lacs. This amount includes the interest as on 13.09.2013. After adjusting the amount of Rs. 56.00 lacs as aforesaid, the total amount which is still to be recovered by the Bank comes to Rs. 20.00 lacs.

The learned counsel appearing for the appellant and the appellant submitted that Rs. 20.00 lacs shall be deposited by the appellant on or before 04.12.2013. On the amount of Rs. 20.00 lacs, the Bank shall be entitled to charge the interest from 13.09.2013 to 04.12.2013. On the said amount the Bank shall charge the same interest by which the figure recoverable comes to Rs. 76.00 lacs. The appellant shall pay the amount of interest within 15 days from the date of intimation given by the Bank.

This also clarifies that the decision passed on 08.07.2013 and the order passed by this Tribunal today shall only be applicable in relation to the account for which the notice under Section 13(2) of the SARFAESI Act, 2002 was given. This Tribunal has not adjudicated anything with respect to the default if there is in relation to any other account as no notice under Section 13(2) of the SARFAESI Act, 2002 was given by the Bank till now. On deposit of the said amount, the earlier direction passed by this Tribunal on 08.07.2013 shall be complied with by the Bank".

28. From the above, it is clear that the liability of the borrowers was only to the tune of Rs. 20.00 lacs plus interest for the period from 13.09.2013 to 04.12.2013 in respect of the account, for which notice under Section 13(2) was issued by the Bank.

29. The aforesaid order for the first time was challenged by the Bank and the auction purchaser before the Hon'ble High Court at Patna by filing Civil Writ Jurisdiction Case No. 24462/2013 and Civil Writ Jurisdiction Case No. 64/2014, which were disposed off by the Hon'ble High Court vide common order dated 10.08.2016 with the following orders:-

"The details on the outstanding finds mention at paragraphs 4 to 6 of the supplementary affidavit filed on 18.01.2016 and which comes to Rs. 99,10,863.63. Since Rs. 50,00,000/- is already deposited by the borrower with the Debts Recovery Tribunal at Calcutta on 30.04.2012 and a further amount to the tune of Rs. 6,00,000/- has subsequently been deposited by him hence the borrower would now be required to deposit a sum of Rs. 43,10,863.63 and which would be towards the full and final settlement of the dues outstanding against M/s Maruti Automobiles. The borrower should deposit Rs. 13,10,863.63 within one month from today and the remaining 30,00,000/- be deposited in equal monthly installments in the next three months falling thereafter. The moment the borrower would deposit the entire outstanding amount that the Bank would take steps for restoration of the possession of the shops in question to the borrower.

The order passed by the appellant Tribunal on the miscellaneous application stands modified only to the extent of quantification with no other infirmity found therein requiring any inference".

30. In view of the aforesaid order of the Hon'ble High Court, it is clear that the Hon'ble High Court without touching any merits of the case has only modified the order of this Appellate Tribunal to the extent of amount as determined by this Tribunal. As per the said order, the total liability of the borrowers was to the tune of Rs. 99,10,863.63 and after reducing the amount of Rs. 50.00 lacs before the DRAT, Calcutta and further Rs. 6.00 lacs with the appellant-Bank,

the borrowers had to deposit only Rs. 43,10,863.63, out of which Rs. 13,10,863/- was to be deposited within a month from the date of the said order and the remaining in three equal monthly installments, thus the said amount was to be deposited by the borrowers up 10.12.2016, but instead of complying the same, the borrowers preferred Letters Patent Appeal Nos. 2341/2016, which was dismissed vide order dated 09.05.2018.

31. From the above, it is clear that there is no dispute with regard to the order dated 26.03.2012 passed by the Tribunal below, order dated 08.07.2013 of this Appellate Tribunal as well as the order dated 10.08.2016 of Hon'ble High Court, but the question remains, as to whether the borrowers have deposited the entire amount as quantified by the order of the Hon'ble High Court or not?
32. Since the order dated 10.08.2016 passed by the Hon'ble High Court in the Writ Petition filed by the Bank and the auction purchaser has not been interfered with by any competent court, therefore, the amount quantified in the said order is a final figure with regard to the account for which the notice under Section 13 (2) of the SARFAESI Act was issued by the Bank as held in the order passed earlier.
33. It has been contended on behalf of the appellant that the order dated 10.08.2016 passed by the Hon'ble High Court has never been complied with by the borrowers as they were required to deposit Rs. 43,10,863.63, out of which 13,10,863.63 within one month from the date of said order and the remaining Rs. 30.00 lacs within three months thereafter in equal monthly installments. In this regard, it is stated that pursuant to the order dated 31.05.2018 passed by this Appellate Tribunal in M.A. No. 11/2018 in Appeal (T) No. 01/2013, an amount of Rs. 71,69,585.00 was released

in favour of the appellant-Bank vide D.D. No. 632719 dated 07.06.2018. Prior to it, the appellant had deposited Rs. 14.00 lacs on 30.12.2013 with the Bank through two demand drafts bearing no. 17984 and 17985 dated 14.11.2013 in compliance of the order dated 03.10.2013 passed by this Appellate Tribunal, which is evident from the letter dated 04.12.2013 issued by the appellant-Bank, copy of which is placed as annexure no. 28 at page no. 159 of the reply of the borrowers.

34. So far as the contention of the respondent-borrower that Rs. 6.00 lacs was deposited with the Bank as mentioned in the orders of this Appellate Tribunal as well as the Hon'ble High Court is concerned, the respondent-borrower himself has stated in para 80 of his reply that Rs. 2.50 lacs, Rs. 4.00 lacs deposited on 16.02.2007 and 02.02.2010 were adjusted against the Car loan, therefore, the said amount cannot be considered to be deposited towards the loan account pertaining to the Maruti Automobiles.
35. With regard to deposit of the amount of Rs. 7,41,300/- pursuant to the order of the Hon'ble High Court, the Tribunal below itself has stated in para 59 of the order impugned that the appellant-Bank had refused to accept the said amount, therefore, the said amount was deposited by way of FDR payable to the Bank through Registrar of the Tribunal below, thus against the total recoverable amount of Rs. 99,10,863.63 as determined by the Hon'ble High Court vide order dated 10.08.2016 passed in the writ petitions filed by the Bank as well as the auction purchaser, the borrowers have deposited only Rs. 93,10,884/-, as such there is a shortfall of Rs. 5,99,979.63 plus amount of interest for the delayed period as the said amount was payable as on date 08.07.2013, for which the appellant-

Bank is entitled, but the Tribunal below without considering this aspect of the matter has dismissed the claim of the appellant vide order impugned, which is liable to be modified to this extent.

36. So far as the appeal Dy. No. 367/2022 filed by the auction purchaser is concerned, the same is not maintainable on the following grounds:-

- I. The present appeal has been filed by the auction purchaser against the order impugned passed by the Tribunal below in Original Application preferred by the Bank under Section 19 of the RDB Act, 1993 for recovery of its dues, whereas the appellant has purchased the property in question under the SARFAESI Act.
- II. The borrowers had challenged the auction proceedings before the Tribunal below by filing the S. A. No. 133/2011, which was decided by the Tribunal below vide order dated 26.03.2012 setting aside the auction conducted by the Bank in favour of the appellant-auction purchaser. The same has been accepted by the Bank in paragraph no. 20 at page no. 94 of the memo of appeal.
- III. The aforesaid order of the Tribunal below had never been challenged either by the Bank or by the appellant in the present case before any Court or Tribunal, therefore, the same has attained finality as discussed in the preceding paragraph of this judgment.
- IV. The order passed by the Tribunal below in the S.A. of the borrowers has already been affirmed by this Tribunal vide order dated 08.07.2013 passed in Appeal (T) No. 01/2013 and in the said order, it was

specifically directed that in case the appellant does not deposit the amount within a period of 60 days, then the Bank shall be free to auction the property, meaning thereby the Bank, if required, could have proceeded for fresh auction and could not have continued with its earlier auction, which has not been done.

- V. In conclusion, the appellant has no locus to dispute the order impugned, because the dispute pertaining to the proceedings initiated by the Bank under the SARFAESI Act in respect of the property in question, which was purchased by the appellant in auction, had extinguished long back as discussed in the preceding paragraph of this judgment and the present proceedings initiated by the Bank pertains to the recovery of dues under the RDB Act.
- VI. Since the auction has been set aside long back, but the appellant-auction purchaser has illegally been enjoying the property in question, therefore, the Bank is directed to return the auction amount to the auction purchaser without any interest within 15 days and shall take back the possession of the property in question.
- VII. It is relevant to state that the appellant (auction purchaser) is in possession of the property in question, whereas the auction has been set aside long back and the borrower is deprived from the possession of the property in question and is also paying the interest on the outstanding amount as well as the Bank is enjoying the auction amount, therefore, it would only be appropriate to direct that the Bank shall take into account the auction amount only for the purpose of

calculating the interest, which is recoverable from the borrowers.

37. In view of the discussions as held above, the order impugned passed by the Tribunal below is modified to the extent that the appellant-Bank is entitled to recover the amount of Rs. 5,99,979.63 along with interest for the delayed period. The Bank is directed to calculate the interest on the basis of reducing balance and intimate the same to the borrowers within 15 days from today and thereafter the borrower shall pay the same within 30 days.
38. In case, the borrowers fail to comply with the aforesaid order, the Bank shall be free to proceed for recovery of its dues in accordance with law.
39. If the aforesaid order is complied with by the borrower, the Bank shall restore the physical possession of the property in question with the borrowers within 15 days thereafter.
40. Accordingly, the appeal filed by the Bank is disposed off and the appeal filed by the auction purchaser is dismissed as not maintainable with no order as to costs.
41. A copy of this judgment be forwarded to the parties as well as DRT concerned and be also uploaded on e-drt portal.

**CHAIRPERSON**

VN Giri,PS