

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Case No. WP(C) No. 1866/2024

Reserved on: 05.03.2026

Pronounced on: 23.03.2026

Uploaded on: 23.03.2026

Whether the operative part or
full judgment is pronounced

1. Abdul Rouf Bhat S/o Ali Mohammad Bhat R/o Bonpora
Batmaloo, Srinagar.
2. Aijaz Ahmad Bhat, S/o Ali Mohammad Bhat R/o Bonpora
Batmaloo, Srinagar.
3. Imtiyaz Ahmad Bhat, S/o Ali Mohammad Bhat R/o Bonpora
Batmaloo, Srinagar.

.....Petitioner/Appellant(s)

Through: Mr. Mohammad Younis Bhat, Advocate

Vs

1. Jammu and Kashmir Bank
Ltd. Corporate
Headquarters, M.A Road,
Srinagar, Through its
Chairman.
2. Authorized Officer, Jammu
& Kashmir Bank Ltd.
B/U SSI Lal Chowk,
Srinagar.
3. Branch Head, J&K Bank,
Branch SSI Lal Chowk,
Srinagar.
4. Ms. Masarat Tabasum
D/o Ghulam Hassan Baba,
R/o Mominabad Bemina
Srinagar.

..... Respondent(s)

Through: Mr. Shafqat Nazir, Advocate for R-1 to R-3.
Mr. Hashir Shafiq Khan, Advocate for R-4

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

(JUDGMENT)

Shahzad Azeem-J

1. The petitioners have called in question the auction sale notice/tender notice issued and published on April, 19 2024 by the respondent-Bank under Rule 8(6) of Security Interest (Enforcement Rules) 2002 (Rules of 2002) made under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) and also sale certificate dated June, 07 2024.

2. The controversy on hand lies in short compass. The petitioners have availed loan facility for an amount of Rs. 20.00 lacs vide sanction letter dated Feb, 18 2013 from the respondent-Bank and said facility was secured by way of hypothecation of stocks and equitable mortgage of immovable property. After some time, the loan account of the petitioners was turned irregular and despite, they were provided multiple opportunities by way of reminders to regularize their loan account but they failed, thus, the account was classified as Non Performing Asset (NPA) w.e.f March, 31 2017. As a consequence, proceedings under SARFAESI Act came to be initiated and accordingly, demand notice under Section 13 (2) of the SARFAESI Act was issued on April, 04 2018. The petitioner did not turn up and accordingly, possession notice under Section 13 (4) of the SARFAESI Act was issued followed by proceedings under Section 14 of the SARFAESI Act came to be initiated. After obtaining the physical possession of the mortgaged property, the respondent-Bank issued and duly published in newspapers auction notices (Tender Cum Sale Notices) under Rule 8(6) of the Rules of 2002 and in pursuance to the third tender notice dated April, 17 2024 duly published on April, 19 2024 in English newspaper, the respondent-Bank received a bid of Rs. 75.00 lacs from respondent No. 4- Mst. Masarat Tabasum.

3. Accordingly, the respondent-Bank confirmed the sale in her favour on May, 17 2024, on receiving full consideration amount and sale certified was also issued on June, 07 2024.

4. At this stage, it is important to note that as per the record, the redemption notice dated March, 25 2024 despite being served and later on, published in Urdu and English dailies on April, 04 2024 and April, 05 2024, respectively, but no steps were taken by the petitioners, therefore, auction was held and subsequently, the respondent-Bank served a notice dated July, 06 2024 upon the petitioners for removal of articles from the secured property. It is further seen from the record that respondent No. 4 being bona-fide purchaser of the property in question and after having paid the entire consideration amount is put in possession of the mortgaged property and respondent-Bank has also issued the sale certificate in favour of the auction purchaser-respondent No. 4.

5. The petitioners have made an attempt to challenge the auction sale notice dated April, 19 2024 and sale certificate dated June, 07 2024 on the ground that the respondent-Bank has observed the procedure under SARFAESI Act in breach, in that, neither notices have been served nor same are published in the newspapers.

6. At the outset, we deem it proper to place on record that the submissions made by the petitioners have been found to be incorrect in view of the record submitted by the respondent-Bank wherein, all the notices shown to have been duly published in English as well as Urdu daily newspapers including same are posted on the given addresses and postal receipts are also preserved by the bank, therefore, the plea of the petitioners that they are not in know of the proceedings is belied by the overwhelming record itself.

7. Respondent No. 4, i.e. auction purchaser also filed objections wherein, inter-alia, it is stated that the petitioners have also filed collusive civil suit in respect of the same property which is pending disposal before the Court of learned 1st Additional Munsiff, Srinagar titled 'Muzaffar Ahmad Bhat Vs. Aijaz Ahmad Bhat' and also the petitioners remain successful in obtaining the interim order.

8. The respondent-Bank has also filed detailed objections and learned counsel for the parties have also advanced arguments in support thereof.

9. Indisputably, as on date, the mortgaged property stood auctioned after having duly published auction notices and possession has been handed over to auction purchaser-respondent No. 4.

10. Therefore, in view of the above stated facts, question arises as to whether, the petitioners can redeem the mortgaged property in terms of Section 13 (8) of the SARFAESI Act.

11. The point involved in the petition is no more res integra and is settled by Hon'ble Supreme Court in **M. Rajendran and ors. Vs. M/s KPK Oils and Proteins India Pvt. Ltd. And ors.; 2025 SCC Online SC 2036**, a *locus classicus* on the subject wherein, Hon'ble Supreme Court while interpreting the object underlying Section 13 (8) of the SARFAESI Act held as follows:-

"To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of due to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be.

A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.”

12. Hon'ble Supreme Court went onto explain the object underlying amended Section 13 (8) of the SARFAESI Act, that the amended provisions extinguishes the right of redemption of the borrower in the event he fails to repay his dues and redeem the asset before publication of the Auction Notice.

13. In the given facts & circumstances, the right of the petitioners to redeem the secured assets stood extinguished on publication of auction notice, coupled with the fact that by now, not only the sale certificate has been issued in favour of respondent No. 4, but she has been put in possession of the mortgaged property.

14. There is another aspect of the matter that despite petitioners have filed a civil suit in respect of the same property and have also obtained the interim order, but failed to disclose the same in the writ petition. In this regard, it is noteworthy that extra

ordinary writ jurisdiction of the High Court under Article 226 cannot be converted into a Civil Court under the ordinary law, particularly when a Suit is pending and remedy of appeal or revision is available, therefore, where the Civil Court has the jurisdiction to try a Suit, the High Court cannot convert itself into an Appellate or Civil Court.

15. It is settled law that jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and thus, it is imperative that the petitioners approaching the writ Court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything.

16. In this regard, a reference to the judgment of Hon'ble Supreme Court passed in **Udyami Evam Khadi Gramodyog Welfare Sanstha Vs. State of U.P reported in (2008) 1 SCC 560** is noteworthy, wherein, it is held that *“a writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.”*

17. In the case on hand, the petitioners have not only concealed and distorted the facts but despite being duly served with all the notices issued under the SARFAESI Act which were duly published also but the petitioners have resorted to the writ jurisdiction by making misrepresentation and re-litigation, as such, same amounts to gross abuse of the process of the Court.

18. In view of the aforesaid, we are of the considered opinion that the petition is marred by concealment and distortion of facts and also on completion of auction and issuance of sale certificate in favour of respondent No. 4, the right of redemption of the

petitioners also stood extinguished, therefore, the writ petition being misconceived, same is, accordingly, dismissed along with connected CM(s).

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

SRINAGAR

23.03.2026

Tarun/PS

Whether judgment is speaking:

Yes

Whether judgment is reportable:

Yes

