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Borrower’s Right of Redemption Limited under SARFAESI: Supreme Court Clarifies in Sanjay Sharma v. Kotak Mahindra Bank Ltd. & Ors.

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In a significant judgment, the Supreme Court of India addressed and reiterated the extent of a borrower's right of redemption under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The case, *Sanjay Sharma v. Kotak Mahindra Bank Ltd. & Ors.*, provided a vital interpretation, emphasizing that a borrower's right to redeem a mortgaged property is extinguished once the notice for sale is published under the Act.

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Case Background

The dispute arose from the auction of the basement of a property in Old Rajinder Nagar, New Delhi, mortgaged by its owner Champa Bhen Kundia to Associated India Financial Services in 2001, with the debt later assigned to Kotak Mahindra Bank. Following a loan default, the bank initiated proceedings under the SARFAESI Act, leading to a public auction in December 2010.

Sanjay Sharma, the highest bidder, purchased the property, but Respondent No. 2 challenged the auction, claiming possessory rights based on unregistered sale agreements executed predating the mortgage. After rounds of litigation in various forums, including the Debt Recovery Tribunal (DRT) and the Delhi High Court, the matter reached the Supreme Court.

Rival Contentions

- **Sanjay Sharma (Appellant):** The appellant contended that the auction was conducted in accordance with the SARFAESI Act, and Respondent No. 2's claims were invalid as the agreements they relied on were unregistered, violating Section 54 of the Transfer of Property Act. Sharma sought possession of the property purchased through the auction.
- **Kotak Mahindra Bank (Respondent No. 1):** The bank argued that it had complied with all statutory requirements and emphasized that Respondent No. 2's claims were not supported by any registered sale documentation for the property in question.
- **Respondent No. 2:** They asserted a right of redemption under Section 13(8) of the SARFAESI Act, arguing that their possessory rights should have been considered before auctioning the property.

Supreme Court's Analysis

The Supreme Court provided a detailed interpretation of Section 13(8) of the SARFAESI Act, both in its unamended and amended forms:

1. **Pre-Amendment Position:** Before the 2016 amendment, a borrower's right of redemption was available until the secured asset was sold or transferred. In the present case, Respondent No. 2 failed to exercise this right during the multiple opportunities provided by the DRT.
2. **Post-Amendment Position:** After the amendment, the right of redemption is limited to before the publication of the sale notice under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002. This amendment was introduced to bring certainty to the foreclosure process and ensure the finality of sales under the SARFAESI Act.
3. **Borrower's Redemption Rights:** The Court highlighted that the right of redemption is not unfettered and must be exercised within the statutory timeframe. In this case, Respondent No. 2's attempts to redeem the property after the auction notice were deemed legally impermissible.

Key Observations

- **Unregistered Documents:** Respondent No. 2's possessory claims were based on unregistered agreements, which do not constitute valid transfers under Section 54 of the Transfer of Property Act.

- **Auction Validity:** The auction conducted by Kotak Mahindra Bank complied with the SARFAESI Act's provisions, including the publication of the sale notice. The Court found no irregularities or violations in the process.
- **Finality of Sales:** The judgment reiterated that public auctions must not be set aside lightly unless there is evidence of fraud, collusion, or significant procedural violations.

Relevant Case Laws

1. **Babasheb Dhondiba Kute v. Radhu Vithoba Barde:** Reinforced the necessity of registration for property transactions to establish ownership.
2. **V.S. Palanivel v. P. Sriram:** Emphasized the sanctity of auction sales unless vitiated by material irregularities.
3. **Celir LLP v. Ms. Sumati Prasad Bafna:** Stressed that auctions should not be interfered with unless substantial procedural flaws are evident.

Conclusion

The Supreme Court's ruling in *Sanjay Sharma v. Kotak Mahindra Bank Ltd.* is a vital reiteration and clarification of the borrower's right of redemption under the SARFAESI Act. By holding that this right is extinguished upon the publication of the sale notice, the Court has reinforced the need for borrowers to act promptly and within statutory limits.

Additionally, the judgment highlights the importance of legal compliance in property transactions, protecting the rights of bona fide auction purchasers while ensuring procedural integrity. This decision provides much-needed certainty in the enforcement of secured creditors' rights under the SARFAESI Act.

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