



SARFAESI

Beyond SARFAESI: Supreme Court Grants Relief Through Article 142 in OTS Dispute

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Introduction

The Hon'ble Supreme Court's order in *Sumaiya Parveen v. Central Bank of India*¹ is a notable illustration of the Court's willingness to invoke its plenary powers under Article 142 of the Constitution to temper the rigour of statutory recovery proceedings with equitable considerations. While the case arises in the context of SARFAESI enforcement and an expired One Time Settlement (OTS) scheme, the decision does not turn on statutory interpretation or banking law principles in the conventional sense. Instead, it foregrounds how constitutional equity may intervene in exceptional factual circumstances like a SARFAESI OTS dispute to prevent manifest hardship, even where the bank's legal position is otherwise unimpeachable.

Table of contents

- [Introduction](#)
- [Factual Matrix](#)
- [Issues](#)
- [Parties' Submissions](#)
- [Court's Analysis](#)
- [Holding](#)
- [Significance](#)

Factual Matrix

The appellant's husband, proprietor of FILSA Leathers, had availed credit facilities of ₹50 lakhs from the respondent bank by mortgaging a residential property. Until his death on 25 May 2021 during the second wave of COVID-19, the loan account was regular and instalments were being paid. Following his demise, the account was classified as a Non-Performing Asset (NPA), and proceedings under the SARFAESI Act, 2002 were initiated. In January 2024, the bank offered an OTS of ₹34,69,000 against total dues of approximately ₹71,00,000. The appellant deposited the 10% upfront amount of ₹3,46,900 but could not pay the balance within the stipulated six months. Subsequently, when she sought revival of the earlier OTS, the bank allegedly demanded an additional ₹9 lakhs. Upon her inability to meet this demand, a possession notice under Section 13(4) of SARFAESI was issued. Her writ petition before the Madras High Court challenging the refusal to honour the earlier OTS was dismissed. She then approached the Supreme Court.

During the pendency of proceedings, the Supreme Court permitted her to submit a fresh OTS in terms of the old scheme. However, in purported compliance, the bank demanded ₹46,34,000 (inclusive of the upfront deposit), requiring her to pay nearly ₹42,87,100 more. The appellant contended that she had been deprived of the benefit of the original OTS for no fault of her own and that her liability should not exceed ₹31,22,000.

Issues

- Whether the appellant could claim enforcement of an expired OTS scheme on equitable grounds.
- Whether the bank's insistence on a higher compromise amount was legally sustainable.
- Whether the Supreme Court could, in exercise of Article 142, mould relief contrary to the strict legal rights of the bank under SARFAESI and contractual principles.

Parties' Submissions

The appellant argued that she had acted bona fide and had deposited the upfront OTS amount. She claimed that delay in communication from the bank, allegedly through a WhatsApp message, and subsequent conduct of the bank deprived her of the opportunity to comply within time. She pleaded financial incapacity, the extraordinary circumstances of her husband's death during the pandemic, and the fact that the mortgaged property was a residential house.

The bank, on the other hand, maintained that the earlier OTS had lapsed due to non-compliance within the prescribed timeline. It asserted that its fresh demand was legally sustainable, being consistent with its internal settlement policy and recovery rights under SARFAESI. From the bank's perspective, there was no enforceable right in favour of the appellant once the OTS period

expired.

Court's Analysis

The Court's reasoning is anchored in a constitutional, not statutory, lens. It consciously refrained from examining whether the appellant had a legally enforceable right to revival of the expired OTS or whether the bank's enhanced demand violated any provision of SARFAESI or banking guidelines. Instead, the Court framed the matter as one involving disproportionate hardship arising from a sequence of uncontested facts: the borrower's death during COVID-19, the prior regularity of the loan account, the appellant's bona fide deposit of the upfront OTS amount, and the threatened dispossession from a residential home. A key analytical feature is the Court's explicit recognition that the bank's position was "legally sustainable." This acknowledgment allowed the Court to separate the domain of legal entitlement from the domain of constitutional justice. The Court did not dilute SARFAESI powers, reinterpret OTS policy, or create a right to enforce a lapsed settlement. Rather, it assessed whether, in the totality of circumstances, insisting on the bank's full legal claim would produce an inequitable outcome.

The Court also adopted a calibrated approach. It neither restored the original OTS figure nor accepted the appellant's computation. By fixing a fresh payable amount, it effectively engineered an equitable compromise that balanced recovery interests with humanitarian considerations. The grant of eight weeks' time and the direction to freeze further interest demonstrate that the relief was designed to be practically workable, not merely declaratory. Finally, the Court inserted a limiting principle by declaring that the order should not be treated as a precedent. This indicates a conscious judicial effort to prevent the normalization of equitable interference in routine recovery matters.

Holding

The Hon'ble Supreme Court did not hold that the appellant had a right to enforcement of the expired OTS, nor that the bank acted unlawfully. Instead, it issued operative directions in exercise of Article 142 to do complete justice in the case:

- The appellant must pay ₹33,00,000 in addition to the upfront deposit already made.
- She is granted eight weeks to make this payment.
- Upon such payment, further interest shall stand frozen.
- The bank must issue a no-dues certificate and release the original title deeds.
- If the appellant fails to comply within the stipulated time, the bank is free to proceed under law.
- The directions are confined to the peculiar facts and are not to be cited as precedent.

Significance

This decision is significant less for what it says about OTS or SARFAESI, and more for what it reveals about the Supreme Court's constitutional role. First, it demonstrates that OTS schemes, though contractual and policy driven, may be revisited through constitutional equity where strict enforcement would produce disproportionate hardship. Second, the Court's express acknowledgment that the bank's position was legally correct, yet relief was warranted, highlights the distinction between legal correctness and constitutional justice. Third, the use of Article 142 here is a safety valve against mechanical enforcement of recovery laws in humanly compelling situations, particularly involving residential properties and pandemic related distress. Fourth, the non-precedential warning is jurisprudentially important. It preserves the integrity of banking recovery mechanisms while allowing tailored relief in exceptional cases. Finally, the case underscores a broader post pandemic judicial sensitivity to borrowers who suffered collateral consequences due to COVID-19, especially where there is evidence of bona fide intent to repay.

For more details, write to us at: contact@indialaw.in

1. Sumaiya Parveen v. Central Bank of India (ARISING OUT OF SLP (CIVIL) NO(S). 29289-29290 OF 2024)) [??](#)

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