

LEGAL UPDATES

SC: SC EXAMINES THE SCOPE OF GROUNDS FOR REJECTING THE ARBITRAL AWARD UNDER SEC. 37 OF THE ARBITRATION ACT

Telangana HC rejects a writ by borrowers seeking to set aside the auction-cum-sale notice ("auction notice") under Rule 8(6) and 9(1) of Security Interest Enforcement Rules ("the Rules"). The borrowers contended that they defaulted in repayment of the loan, and Respondent Bank issued an auction notice and fixed a date for auction without following the procedure as prescribed under Rules 8(6) and 9(1) of the Rules. The Respondent Bank contended that they acted in complete consonance with the procedure prescribed under the Rules. Further the Respondent Bank submitted that they had given a categorical 30 days period from the auction notice date to the auction date and the borrowers can exercise their right under sec.13 of SARFAESI("the act") to clear the outstanding dues and redeem the property. HC opined that the writ petition fails on both counts of alternate remedy available under the Act and subsequently on the case's merits. HC observed that DRT under Sec.17, has got the sufficient authority to address the grievances of the borrowers against the actions of Respondent Bank. Thus, the HC held that Sec. 17 is an alternate effective remedy which needs to be exhausted before exercising writ jurisdiction. Additionally, the court opined that the present writ is pending since 2019 and hence also considered the writ on merits. The Court while scrutinising the provisions of the SARFAESI Act and relying on Mathew Varghese Case, held that Respondent Bank has given a clear 30 days from the auction notice's date to the auction's date for the secured asset. The Court further opined that the redemption right remains available to the borrower till the date and time of the auction sale. As a result, the court dismissed the borrowers' argument that there was an explicit violation of the provisions of the Act and its rules.

