



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 9th OF APRIL, 2025

WRIT PETITION No. 2829 of 2024

SMT. SWATI PATEL

Versus

BANK OF INDIA AND OTHERS

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Appearance:

Shri Hare Krishana Upadhyay, learned counsel for the petitioner.

Shri Praveen Kumar Chaturvedi, learned counsel for the respondent
no.1 & 2.

Shri R.D. Padraha, learned Government Advocate for the respondent
no.3.

Shri Rajesh Maindiratta, learned counsel for the respondent/intervener.
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ORDER

Per. Justice Vinay Saraf

1. The petitioner, who obtained loan from respondent/Bank and mortgaged her property has preferred the present petition seeking following reliefs:

"i. That, this Hon'ble Court may kindly be pleased to issue a writ of mandamus directing the bank authorities to accept the amount and redeem the "mortgage of the secured assets i.e. the house of the petitioner, in the interest of justice, equity and good conscience.

ii. Any other relief which this Hon'ble High Court



deems fit and proper may also be granted."

2. With the consent of parties, final arguments were heard for the purpose of final disposal of the petition.

3. The facts sufficient to decide the present petition are as under:

3.1 In 2003-2004, the petitioner availed the housing loan of Rs.12 lacs from the respondent/Bank of India after executing requisite documents mortgaging the house with the Bank.

3.2 As the petitioner failed to pay the installments in time, the Bank declared the petitioner's account as non performing assets (NPA) on 19.10.2009 and issued a notice under Section 13(2) of the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short, 'the SARFAESI Act') on 06.11.2009 calling upon the petitioner to pay due amount of Rs.10,67,236/- along with interest within a period of 60 days.

3.3 The petitioner failed to make payment of the demanded amount, resultantly, the Bank issued a notice under Section 13 (4) of the SARFAESI Act on 01.02.2010, which was also published in two daily news paper namely; *Dainik Bhaskar* and *Desh Bandhu* on 07.02.2010.

3.4 An auction notice was also published for the purpose of sale of secured asset on 13.08.2010 in two news papers mentioning that the auction will be conducted on 13.09.2010.

3.5 After publication of auction notice, the petitioner approached to Debts Recovery Tribunal by filing S.A.No.137/2010 assailing the notice under Section 13 (4) of the Act which was dismissed on 13.12.2010.



3.6 Meanwhile, fresh auction notice was published in two daily news paper namely; *Patrika* and *Desh Bandhu* on 12.11.2010 intimating that the auction will be conducted on 22.11.2010. Thereafter, the auction was conducted on 22.11.2010 and the said asset was auctioned and sold for the sum of Rs.30.62 lacs.

3.7 The said amount was deposited by auction purchaser and the Bank after adjusting the loan amount issued a cheque in the sum of Rs.9,63,387/- with a communication dated 28.12.2010 in favour of the petitioner under registered AD post which was deposited in some other Bank and was cleared and encashed on 22.01.2011 through clearance. Thereafter, sale certificate was issued in favour of the auction purchaser.

3.8 Petitioner challenged the auction proceeding conducted in pursuance of the notice published on 12.11.2010 on various grounds *inter alia*; the auction was conducted in violation of the Rule 8 and 9 of the *Security Interest (Enforcement) Rules, 2002* which contemplate that auction can be conducted only after expiry of 30 days but the auction was conducted within ten days from the date of publication of notice and consequently the same was in violation of the statutory rules.

3.9 The Debt Recovery Tribunal by order dated 25.09.2012 dismissed S.A.No.95/2011 filed under Section 17(1) of the SARFAESI Act seeking quashment of the recovery proceedings initiated by the Bank and to set aside the sale of the secured assets.

3.10 The order passed by the DRT, Jabalpur was assailed by the petitioner before DRAT, Allahabad in Appeal No.R-163/2012 which was



dismissed by Appellate Tribunal by order dated 30.11.2012 whereby the action of the respondent/Bank as well as the order passed by DRT was upheld.

3.11 The petitioner assailed the order passed by the DRAT dated 30.11.2012 and the auction sale by filing petition under Article 227 of the Constitution of India bearing W.P.No.239/2013 before the Division Bench of this Court seeking relief to set aside the order passed by the DRAT, Allahabad on 30.11.2012 and to issue directions to the respondent/Bank to accept the auction bid amount along with interest from the petitioner and quash the auction sale as well the sale certificate.

3.12 The said W.P.No.239/2013 was dismissed by coordinate Division Bench by order dated 19.02.2018 holding that the petitioner has waived her right inasmuch as she has accepted the excess amount over the loan outstanding.

3.13 The order passed in W.P.No.239/2013 was assailed by the petitioner in Special Leave to Appeal No.7644/2018 which was disposed of by order dated 06.04.2018 with liberty to the petitioner to move to High Court by way of filing the review petition, if so advised. The Supreme Court also granted leave to the petitioner to approach the Supreme Court once again in the event if it become so necessary. The said order was passed after recording the statement of the counsel for the petitioner that a contention was raised before the High Court that the excess amount was received by fictitious person who had opened bank account in the name of the petitioner and the petitioner has not received the said amount and the High Court has



decided the writ petition on the premise that the petitioner has received payment of excess/surplus amount realised upon auction sale without recording any finding on the issue raised by the petitioner.

3.14 Thereafter, the petitioner preferred R.P.No.680/2018 which was dismissed as withdrawn in the presence of the petitioner and her counsel on 01.07.2022 and in this way, the challenge to the auction has come to an end.

3.15 Thereafter the Bank approached this Court by filing W.P.No.27173/2023 aggrieved by inaction on the part of Tahsildar-cum-Executive Magistrate, Gorakhpur District Jabalpur to execute order of District Magistrate, Jabalpur passed on 13.04.2011 under Section 14 of the Act by which the Tahsildar was directed to extend the assistance for obtaining the possession of the secured assets.

3.16 The said petition was disposed of by the Coordinate Division Bench of this Court by order dated 06.11.2023 and direction was issued to execute the order passed by the District Magistrate within 45 days from the date of receipt of the copy of the order.

3.17 Thereafter, once again petitioner approached this Court seeking directions to the respondent/Bank to accept the due amount and to redeem the mortgage of secured assets by way of filing the present writ petition.

4. Learned counsel for the petitioner submits that the petitioner applied for loan facilities and mortgaged her property in favour of the respondent/Bank and due to losses occurred in business, the petitioner could not deposit the loan amount therefore, her bank account was declared as NPA and the Bank initiated the action under the provision of the SARFAESI



Act however, till today, the possession of the secured asset has not been handed over to the auction purchaser and the petitioner is ready to pay the entire dues to the Bank and consequently as per the unamended provisions of Section 13 (8) of the SARFAESI Act, the right of the borrower to redeem the secured assets is still available. He further submits that the petitioner's right of redemption could not be terminated on account of auction sale of the secured assets itself and the same is still alive as the transfer of the property has not been completed by handing over the possession to the auction purchaser. He further submits that in the earlier round of litigation, the petitioner assailed the validity of the action taken by the respondent/Bank as well as illegality committed in auction sale but the same does not take away the right of the petitioner to seek redemption of the mortgaged property as the petitioner is still in the possession of the secured assets.

4.1. To bolster his submission, learned counsel for the petitioner has relied on the provision of Section 60 of the Transfer of Property Act and the judgment delivered by the Supreme Court in the matter of *Narandas Karsondas v. S.A Kamtam And Another* (1977) 3 SCC 247 whereby Supreme Court has held that Section 60 of the Transfer of Property Act reserves the right of the mortgagor to redeem the property till the stage of the same being conveyed/transferred to the third party. The relevant paragraphs read as under:

"34. The right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the



Indian Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the Court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed

conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption."

4.2. He further relied on the judgment delivered by the Apex Court in the matter of *Mathew Vargese Vs. M. Amritha Kumar & Ors.* (2014) 5 *SCC 610* wherein the Supreme Court upon a combined reading of Section 60 and 54 of the Transfer of Property Act with Section 17 of the Registration Act, 1908 has held that the extension of the right of redemption comes much later than the sale notice.

4.3 Counsel for the petitioner relied upon the judgment delivered by



the Supreme Court in the matter of *Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.* reported in *2024 (2) SCC 1* wherein the Apex Court has held that in accordance with the unamended Section 13 (8) of the Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of secured asset i.e. the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remain alive till the transfer or sale of the secured asset or is contemplated in favour of the auction purchaser. He relied on the conclusion recorded by the Apex Court in respect of the unamended Section 13 (8) of the SARFAESI Act which reads as under:

"110.3. In accordance with the unamended Section 13(8) of the Sarfaesi Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset."

4.4 Learned counsel for the petitioner further submits that even after auction sale and issuance of sale certificate, in view of the fact that the property is still in possession of the petitioner, the sale/transfer is not complete and therefore, the petitioner is still having the right of redemption of mortgage as in the present matter the sale was held in the year 2011 and the provision of Section 13(8) of the SARFAESI Act were amended w.e.f. 01.09.2016 therefore, the unamended Section 13(8) would be applicable to the present case and the Bank may be directed to accept the auction bid amount along with interest and expenses and redeem the property.



5. Learned counsels appearing on behalf of respondent/Bank as well as on behalf of auction purchaser vehemently opposed the petition and argued that present petitioner is a defaulter and challenged the auction conducted by the Bank at every stage unsuccessfully. The Bank auctioned the property and after adjusting the dues amount, the surplus auction money has been returned to the petitioner through a banker's cheque which was deposited by the petitioner in the bank account and cleared in the year 2011 itself. Therefore, after such a long period when the sale certificate of sale was affected in the year 2011, the petitioner has now no right to challenge the same as the challenge to the sale came to an end when the petitioner had withdrawn the review petition no.660/2018 on 01.07.2022. They further submit that by way of the present petition the petitioner is trying to challenge the auction sale again indirectly. It is further submitted that the challenge of the petitioner that she had not received the surplus amount and someone else has received the surplus amount, has also come to an end. The petitioner has already waived her right of redemption and therefore, in the interest of justice, equity and good conscience, no relief can be granted to the petitioner. They further submit that the present petition is abuse of process of law and deserves to be dismissed with exemplary cost.

5.1 Learned counsel for the auction purchaser further submits that the property has already been auctioned in favour of the auction purchaser and the auction purchaser has purchased the said property in the year 2010 and paid the complete auction amount at the same time and despite that he has not been permitted to enjoy the fruits of the property purchased by him.



He further submits that petitioner has no right to claim the redemption of mortgage as the petitioner herself has executed the sale deed in favour of one Smt. Sandhya Verma on 13.01.2011 by which she transferred her all the alleged rights to Smt. Sandhya Verma.

6. We considered the arguments advanced by learned counsels for the parties and perused the documents available on record.

6.1 In the present matter, it is not in dispute that the petitioner had obtained loan and credit facilities in the year 2003-2004 and mortgaged the secured asset which is *Plot No.204 admeasuring 2740 Sq ft. situated at 2-A Phase II of JDA Mauza Badanpur, Shakti Nagar, Ekta Vihar, Saheed Gulab Singh Ward Tahsil and District Jabalpur* in favour of the respondent/Bank on 02.01.2004. It is also not in dispute that the petitioner failed to repay the loan amount and Bank classified the account as NPA w.e.f. 19.10.2009 and thereafter issued notice to the petitioner under Section 13(2) of the SARFAESI Act followed by the notice issued under Section 13(4) of the SARFAESI Act on 01.02.2010 and thereafter issued auction notice on 07.02.2010. It is also not in dispute that the petitioner challenged the action of the Bank before DRT in S.A. No.137/2010 which was dismissed on 13.12.2010. The second auction notice was published in the news paper on 12.11.2010 and auction was conducted on 22.11.2010 which was also challenged by the petitioner before DRT in S.A.No.95/2011 and which was also dismissed by the order dated 25.09.2012. The said order was assailed by the petitioner before DRAT, Allahabad in Appeal No.R-163/2012 which was dismissed by order dated 13.11.2012.



6.2 The coordinate Bench of this Court by order dated 19.02.2018 passed in W.P.No.239/2013 decided the issues raised by the petitioner and upheld the order passed by DRT and DRAT after considering the judgment relied on by the counsel for the petitioner delivered by Supreme Court in the matter of *Mathew Vargese* (supra) and recording the findings that the petitioner had waived her right inasmuch as she has accepted the excess amount over the loan outstanding. The relevant paragraph of the judgment reads as under :

"14. In the light of the aforesaid judgments, the question required to be examined is: whether the petitioner 'has waived her right to dispute the auction in not depositing the amount after the notice under Section 13 (2) was issued on 06.11.2009 and withdrawing the excess amount over the outstanding dues against the petitioner on 22.01.2011? We find that the petitioner has waived her right inasmuch as she has accepted the "excess amount over the loan outstanding. Still further, in terms of Mathew Vargese's case, the purpose of Rules 8 and 9 is to give sufficient time to the borrower to settle the outstanding loan amount. However, the loan amount was not settled after the notice under Section 13 (2) was issued on 06.11.2009. The petitioner did not file any objections under Section 13 (3A) of the Act as well. The petitioner deposited a cheque in the sum of Rs.3,50,000/- but the said cheque was dishonored. Not only that, the petitioner has not challenged the auction in a separate proceedings before the Debts Recovery Tribunal but was satisfied to file an interlocutory application in a challenge to proceedings under Section 14 of the Act. Thus, the conduct of the petitioner is of non-compliance of the provisions of the statute one after another."

6.3 In S.L.P. No.7644/2018 by order dated 06.04.2018, the Supreme



Court granted liberty to the petitioner to move the review petition before this Court and also granted liberty to approach the Supreme Court once again in the event it becomes so necessary. Thereafter the petitioner availed the remedy of review petition which was preferred mainly on the ground that the excess amount was not received by the petitioner and the said amount was received by fictitious person who has opened the bank account in the name of the petitioner and the petitioner had not received the said amount. Thereafter the review petition was withdrawn on 01.07.2022 without any liberty. Meaning thereby; the challenge to the issue that the petitioner has not received the excess amount came to an end. During oral arguments, counsel for the petitioner has fairly accepted before this Court that now the petitioner is not challenging this issue that petitioner has not received the excess amount paid to the petitioner by bankers cheque issued by respondent, Bank and the said amount was duly received by the petitioner.

7. The sole question involved in the present petition requires to be answered is "whether the petitioner has any right to seek redemption of the mortgaged property even after receipt of the excess auction amount?"

7.1 Section 60 of the Transfer of Property Act provides a right to the mortgagor to redeem the mortgage at any time after the principal money has become due by making payment or tender the same at proper time and place of the mortgage money, provided that right conferred by this Section has not been extinguished by act of the parties or by decree of the Court. The right to redeem may be extinguished by an act of the parties or by a decree of the Court. The mortgagor's right of redemption is to be exercised by the payment



or tender to the mortgagee at the proper time and at the proper place of the mortgage money and when it is extinguished by the act of the parties, the act must take the shape and observe the formalities which the law prescribes. The expression 'act of parties' refers to some transactions subsequent to the mortgage and standing apart from mortgage transaction. If a mortgagee exercises his right to auction the mortgaged property and after receipt of the auction money and adjusting the total due amount pay the balance surplus money to the mortgagor and the mortgagor accepts the same, said act of the parties extinguishes the right of the mortgagor to redeem the mortgage.

7.2 Even in the judgment relied upon by the petitioner delivered by the Supreme Court in the matter of *Narandas (supra)*, the Supreme Court has held that the right of redemption is available to the mortgagor unless it has been extinguished by the act of the parties. Meaning thereby; right of the redemption is not absolute and the same can be extinguished by the act of the parties. The power to auction the property should not be exercised by the mortgagee until and unless notice is issued in writing requiring the payment of principal money has been served on the mortgagor. In the case at hand, the respondent/Bank i.e. mortgagee issued a notice under Section 13 (2) of the SARFAESI Act on 06.11.2009 calling upon the petitioner to pay the due amount with interest within a period of 60 days and thereafter issued another notice under Section 13 (4) of the Act on 01.02.2010. In this way, the petitioner was put to knowledge that in case of failure to make the payment, the property will be auctioned. The sale has already been held valid by the DRT and the order passed by the DRT has already been upheld by DRAT



and by the Coordinate Bench of this Court and the excess sale amount have been paid to the petitioner. Under these circumstances petitioner has extinguished her right to redeem the mortgage.

7.3 The Apex Court in the matter of *Mathew Vargese (supra)* found no inconsistency between the unamended Section 13(8) of the SARFAESI Act and general right of redemption under Section 60 of the Transfer of Property Act, 1882 and held that the right of the borrower to redeem the secured assets was available to sale and transfer of some secured assets until and unless by the act of the parties, the same has been extinguished. Similar view was taken by the Apex Court in the matter of *Celir LLP (supra)* and it is held that it is equally well settled that the rights credited for the benefit of the borrower under the SARFAESI Act can be waived by expressed act of the parties or by implied conduct of the parties. The relevant paragraphs read as under:

"64. We are of the view that the failure on the part of the borrower in tendering the entire dues including the charges, interest, costs, etc. before the publication of the auction-notice as required by Section 13(8) of the Sarfaesi Act, would also sufficiently constitute extinguishment of right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the 1882 Act. Furthermore, in the case on hand, there was no claim for right of redemption by the borrower either before the publication of the auction-notice or even thereafter. The borrowers entered into the fray only after coming to know of the confirmation of auction. Be that as it may, once Section 13(8) stage was over and auction stood concluded, it could be said that there was an intentional relinquishment of his right of redemption under Section 13(8), whereby the Bank declared the



appellant as the successful auction-purchaser having offered the highest bid in accordance with the terms of the auction-notice.

65. The Sarfaesi Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the 1882 Act, is a general law vis-à-vis the amended Section 13(8) of the Sarfaesi Act which is special law. The right of redemption is clearly restricted till the date of publication of the sale notice under the Sarfaesi Act, whereas the said right continues under Section 60 of the 1882 Act till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding paragraphs of this judgment and how Parliament desired to have express departure from the general provision of Section 60 of the 1882 Act. The Sarfaesi Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of courts. Similarly, Section 13(8) of the Sarfaesi Act is a departure from the general right of redemption under the general law i.e. the 1882 Act. Further, the legislature has in the Objects and Reasons while passing the amending Act specifically stated “to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts...”. Thus, while interpreting Section 13(8) vis-à-vis Section 60 of the 1882 Act, an interpretation which furthers the said Objects and Reasons should be preferred and adopted. If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose as well as the clear language of the amended Section 13(8).

66. In Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] this Court had interpreted the unamended Section 13(8) of the Sarfaesi Act and Section 60 of the 1882 Act respectively. However, thereafter the legislature amended Section 13(8) of the Sarfaesi Act. Thus, on this score, the decision in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] could be said to have been partially legislatively overruled as the



substratum of the verdict stands altered/amended.

67. Even otherwise, we should not lose sight of the fact that in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] the Court held in regard to the right of redemption that both the Sarfaesi Act and the 1882 Act are complementary to each other and equally applicable. It had held this because, the words “before the date fixed for transfer” in the unamended Section 13(8), amongst other things also means and connotes the date of conveyance of the secured asset by a registered instrument (which is the ordinary process of extinguishment of right of redemption under the 1882 Act). Since, this Court observed that the stipulation or expression “date fixed for transfer” could also mean the date of conveyance/transfer of such secured asset and being so, is not much different from the ordinary process of redemption under the 1882 Act, it could not be said that there was any material inconsistency between the Sarfaesi Act and the 1882 Act, and thus it found no reason or hesitation to hold that the 1882 Act is inapplicable and thus made an endeavour of harmonising the two.

68. It appears that while considering the right of redemption of mortgage under the unamended Section 13(8), this Court in Mathew Varghese [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] only went so far to say that in the absence of any material inconsistency between the Sarfaesi Act and the 1882 Act, there was no good reason to hold that the 1882 Act would not be applicable and as such, held that general right of redemption of mortgage contained in Section 60 of the 1882 Act would apply even in respect of the Sarfaesi Act."

7.4 In the instant case, the coordinate Division Bench in W.P.No.239/2013 has categorically recorded the findings that borrower has accepted the surplus amount of sale consideration after adjusting the loan amount and thus it amounts to waiver. Said judgment was challenged by the



petitioner before the Supreme Court and liberty was granted by the Supreme Court to file a review petition on the plea that some fictitious person has encashed the cheque, which review was filed by the petitioner but the same was withdrawn without any liberty on 01.07.2022. Now the findings recorded by the Coordinate Bench in earlier round of litigation in W.P.No.239/2013 has attained finality and therefore, the petitioner has extinguished her right of redemption by the act of accepting the surplus amount and is now precluded from claiming the right of redemption. Even otherwise petitioner cannot be permitted to approach the Court again and again on the same set of facts. When the action of the Bank taken under the provisions of the SARFAESI Act was held appropriate and the auction sale and issuance of sale certificate have already been upheld, no relief for redemption of mortgage can be granted.

7.5 In the present matter, by the order passed by the Coordinate Bench in W.P.No.239/2013, the alleged right of the petitioner for redemption of mortgage has been closed. If the petitioner is permitted to claim the right of redemption at this stage, that will amount to review of the order passed in W.P.No.239/2013 whereas the review has already been withdrawn by the petitioner on 01.07.2022.

8. In the above conspectus, we do not find any merit in the petition. The petitioner is not entitled for the relief sought by her in the instant petition. The alleged right of redemption of mortgage has already been extinguished by the act of the parties and the order of the coordinate Bench passed in W.P.No.239 of the 2013 has attained finality. Petitioner is not



entitled to claim right of redemption of mortgage after accepting the surplus of auction money. The question involved in the present matter is answered accordingly.

8.1 Consequently, the present petition sans merit and is hereby dismissed. There shall be no order as to costs.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

P/-