



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.....OF 2026
(Arising out of SLP (C) Nos. 16552-53 of 2025)**

BIHAR STATE FINANCIAL CORPORATION & ANR.

... APPELLANT (S)

Versus

BHUSHAN SINGH & ORS.

... RESPONDENT (S)

WITH

CIVIL APPEAL NO.OF 2026
(Arising out of SLP (C) No. 24073 of 2025)

J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.

The instant appeals present a classic case where the borrowers have persistently failed to regularize their account and discharge their liabilities despite being granted multiple opportunities. Their continued defaults ultimately led the Financial Corporation to exercise its statutory power under Section 29 of the State Financial Corporations Act, 1951¹ and auction the

¹ 'SFC Act' for short.

mortgaged property to recover its dues. We are called upon to decide whether, in such circumstances, the concurrent findings recorded by the Courts below setting aside the auction sale, by way of a civil suit, can be sustained in law.

2. The present appeals arise out of the impugned judgment and order dated 18.03.2025 passed by the High Court of Judicature at Patna in First Appeal No.268 of 1999 and First Appeal No.272 of 1999, whereby the High Court dismissed both the First Appeals and affirmed the judgment and decree dated 19.05.1999 passed by the Court of 5th Subordinate Judge, Begusarai² in Title Suit No.39/96.

FACTUAL MATRIX

3. The facts, shorn of unnecessary details, giving rise to the present appeal are as follows:

3.1. Ranjeet Motel & Ors. (Original Plaintiffs)³, for the purpose of setting up an industrial unit approached Bihar State Financial Corporation (Original Defendant No.1)⁴ for a loan of Rs.15 Lakhs. BSFC initially sanctioned an amount of Rs.8.50 Lakhs on 29.05.1982, followed by an additional loan of Rs.3.15 Lakhs on 12.07.1984, against which the borrowers deposited the original title deeds of land and building and created an equitable mortgage over them. Upon default in repayment by the borrowers, BSFC issued a notice dated 24.11.1988 under Section 29 of SFC Act.

² Hereinafter referred to as the 'Trial Court'.

³ Hereinafter referred to as the 'borrowers'.

⁴ 'BSFC' for short.

3.2. Aggrieved thereby, the borrowers filed a writ petition bearing number CWJC No.6104 of 1990 before the High Court also assailing the notification issued by BSFC for sale of the mortgaged property. The High Court, *vide* order dated 06.11.1990, disposed of the said writ petition by fixing a repayment schedule requiring the borrowers to repay their dues in several instalments, beginning from 31.12.1990 and ending on 31.10.1991. The Court also reserved the liberty for BSFC to sell the mortgaged assets in the event of default. Relevant part of the order reads as under:

“According to the petitioner, the total dues up to 31st August, 1990 including interest was Rs. 12, 86,770.52p. (Twelve lakhs eighty-six thousand seven hundred seventy and fifty-two paise).

Mr. Siyaram Shahi, learned counsel for the petitioner informed that pursuant to the aforesaid order dated 17.09.1990. Rs. 3,00,000/- (three lacs) was deposited on 31st October, 1990,

Mr. Shanker Prasad who was appeared for the respondent - Corporation urged that the petitioner should be directed to clear 50 per cent of the due with interest as it stood on 31st August, 1990 by and of this year.

Taking all the facts and circumstances of the case into consideration, we direct the petitioner to deposit Rs, 1,50,000/- (One lac fifty thousand) on or before 31st December ,1990, yet another amount of Rs. 1,50,000/- (One lac fifty thousand) on or before 31st January, 1991. An Amount of Rs. 2,00,000/- (two lacs) should be deposit on or before 31st March, 1991. We further direct the petitioner to deposit an amount of Rs. 2,00,000/- (two lacs) on or before 30th May 1991, yet another amount of Rs.2,00,000/- (two lacs) on or before 31st July, 1991 and whatever may be the balance amount including the interest which the petitioner is liable to deposit in terms of the agreement by 31st October 1991 shall be deposited on or before 31st October 1991. If there is any default on the part of the petitioner in depositing any one of the installments, as indicated above, it will be open the respondent's corporation to proceed with the sale of the properties mortgaged and to execute document in favour of the intending purchaser.

This application is. Accordingly, disposed of.”

(emphasis supplied)

3.3. Since the borrowers failed to repay the amount as per the aforesaid schedule, they filed an interlocutory application on 04.07.1991 before the

High Court seeking an extension of time to deposit the same. The said application was dismissed *vide* order dated 11.07.1991 with a liberty to the borrowers to approach BSFC to enter into an agreement of their own.

It was observed as under:

“The application at flag 'D' has been filed on behalf of the the writ petitioner making a prayer that liberty may be given to the parties enter into a fresh agreement by extending the period mentioned in the order dated 06.11.1990 passed by a Bench of this court...

It is admitted position that the petitioner has filed to pay the instalment which was payable on 31st January, 1991 and thereafter. The present application has been filed on 04.07.1991. we do not think that the facts of the case and the conduct of the parties entitled the writ petitioner to any indulgence do not find any merit in this application at flag 'D' which is, accordingly. Dismissed.

This order, however, will not prejudice the petitioner from approaching the Bihar state Financial corporation from entering into agreement with them of their own.”

(emphasis supplied)

Noticeably, even though the High Court adversely commented on the borrower's conduct, yet no remedial measures were taken to regularize their account.

3.4. As such BSFC again issued a notice on 27.09.1994 under Sections 29 & 30 of the SFC Act, calling upon the borrowers to discharge their liabilities in full within three months, failing which the mortgage property would be advertised for sale under the provisions of the SFC Act for recovery of dues. The relevant portion of the notice is extracted as under:

“7. That the affairs of your concern was reviewed by the corporation and after the consideration it has been decide that notice under section 30&29 of the state financial corporation Act, 1951 be served on the concern and the guarantors of the loan calling upon them to discharge in full their liabilities to the corporation with three months from the date of service of this notice.

8. That the view of the above decision oif the corporation are called upon to discharge tour liabilities in full to the extent of Rs. 14,53,439.08

as on 30.06.1988 as per details given below within three months from the date of service of this notice failing which the mortgage security will be advertised for sale under the provisions of section 29 of SFCS Act, 1951 for recovery of the corporation's dues ...

In that view of the matter, I give you this notice under section 30 & 29 of the SFCs Act, 1951 that should you fail to pay the corporations dues within three months from the date of service of this notice, the corporation will be at liberty to advertises for sale of mortgage security of your concern and to sell the same either by public auction or by negotiation for otherwise, without the help of the court under the provision of section 29 of the SFCS Act, 1951.

Please note that copy of this notice has been kept in the office of the corporation for further reference.”

(emphasis supplied)

3.5. Since the account was not regularized, hence, having no other option, BSFC on 02.03.1996 published a sale advertisement in Hindustan Times, inviting tenders for the purchase of the mortgaged property to recover its dues. The auction sale was held on 18.03.1996 and, thereafter, Sri Ramshekhar Singh⁵ (hereinafter referred to as the ‘*auction purchaser*’) was declared successful, however, the sale was not finalized at that point.

3.6. In the interim, the borrowers on 26.03.1996 filed a suit for declaration, being Title Suit No.39/1996, before the Trial Court seeking, *inter alia*, the following reliefs:

“i. It may be declared that intervener defendant did not derive any right, title interest and possession by virtue of the alleged auction sale on 128.03.96 and delivery of possession is also void and the auction sale and D.P. maybe set aside after declaring the above reliefs the title interest of the plaintiff may be declared.

ii. It may be declared that the defendant has no right to auction u/s 29 and 30 of Bihar State Financial corporation act and the intervener defendant did not derive any interest.

iii. Any other relief or reliefs which the plaintiffs maybe found entitled to get be also awarded to them.

⁵ Predecessor-in-interest of the appellants in SLP (C) No. 24073 of 2025.

iv. By order of ad interim injunction, the defendant corporation may be restrained from taking possession and selling the mortgaged properties of the plaintiff.

v. That an order for mandatory injunction be passed asking the defendant corporation to put the plaintiff back in possession of the premises described and the foot of the plaint in case the defendant corporation take possession of the premises within the pendency of the suit and status quo and be maintained amended as per order dated 03.10.96.

vi. Cost of the suit may be awarded to the plaintiff or such other relief or reliefs may awarded as be deemed fit and proper.”

(emphasis supplied)

It is pertinent to mention that the borrowers also sought an interim injunction restraining BSFC from taking possession and selling the mortgaged properties to the auction purchaser during the pendency of the suit. The said application was dismissed by the Trial Court. The same was affirmed by the High Court *vide* order dated 01.10.1997⁶ and this Court *vide* order dated 13.02.1998⁷.

3.7. Exhibiting all senses of responsibility, reasonableness and good faith, BSFC gave yet another opportunity to the borrowers to take all remedial measures. Hence on 17.04.1996, issued another notice, wherein the borrowers were offered the option to retain the mortgaged property upon matching terms and conditions set forth therein, provided they gave their unconditional acceptance as also, made the payment within 21 days from the date of issuance of the letter. Relevant part of the letter is extracted hereunder for ready reference:

⁶ In Civil Revision No.1553 of 1997.

⁷ In SLP (C) No.1917 of 1998.

**“BIHAR STATE FINANCIAL CORPORATION
FRASER ROAD PATNA-1**

Ref. No- 375
dt. 17.04.1996

Patna,

REGISTERED

To,
M/o Ranjeet Motel
Kachahari Road
Bagusarai

Dear Sir,

Re: of Sale of your Hotel.

Please refer the subject noted above. You are aware that tender notice for sale of the mortgaged assets of your hotel was advertise in Hindustan Times on 02.03.1996. The Corporation has received a worthwhile tender and sale to full load in favour of the tendered on the following terms and conditions:-

1. The consideration money shall be equivalent to B.O.S. as on date of handing over possession of the unit or execution and registration of sale deed whichever is earlier.
2. The purchaser shall have to deposit Rs. 10,00 lakhs as initial cash down payment by Bank and draft in favour or the corporation within 21 days from the date of issue of sale order.
3. The balance amount of the consideration money (after payment of the cash down payment) will be treated as terms loan to the purchaser payable in a period of 36 monthly equal installments The payment of installment will begin after three months from the date of handing over the unit to purchaser.
4. Rate of interest on the loan component shall be 19.5% per annual compounding quarterly. Interest tax will be charged extra as applicable. 2% penal interest will be charged on the amount of default and for the period or default.

...

...

...

12. The Branch Manager, BSFC, Begusarai is hereby authorized to execute necessary legal document in this regard on behalf of the Corporation after deposit of the initial cash down payment by the purchaser and take over the unit and hand over the unit and hand over the same to the purchaser after compliance of the terms and condition of the sale order as per norms of the Corporation.

We give an offer to retain the assets matching terms and conditions provided you and conditional acceptance letter along with payment within 21 days from the date issue of the letter.”

(emphasis supplied)

3.8. Expecting a response in affirmative, which never came, and left with no option, after the expiry of 21 days, on 10.05.1996, BSFC approved the tender of the auction purchaser and communicated the terms and conditions of the sale. The auction purchaser was also asked to execute sale cum-balance loan amount agreement to enable BSFC to hand over the possession of the mortgaged property. Eventually, BSFC, *vide* a sale order dated 14.05.1996, sold the mortgaged property to the auction purchaser and, on 07.06.1996, executed an agreement of sale-cum-payment of loan.

3.9. Aggrieved thereby, the borrowers, on 10.07.1996, filed a writ petition bearing number CWJC No.6641 of 1996 before the High Court seeking an interim injunction restraining BSFC from taking possession of the mortgaged assets as also an order to maintain the *status quo* during the pendency of the civil suit. In the said writ, an interim order dated 17.07.1996 was passed in favour of the borrowers, directing them to deposit Rs.10 Lakhs as per the terms of the tender. However, upon an application for intervention and modification filed by the auction purchaser, the said interim order was recalled and writ petition, *vide* order dated 25.07.1996 stood dismissed as withdrawn, wherein the Court took note of the fact that the auction purchaser had already deposited the entire auction sale consideration. Relevant part thereof is extracted below:

“Heard learned counsel for the petitioner, counsel for respondent, corporation and the intervenor, Respondent No. 4. On 17.07.1996 learned counsel for the petitioner gave an impression that nothing has been done as yet nor anything was said that the property in question was auction solder the intervenor had deposited the entire money of the auction sale and hence the order was passed on giving undertaking by the petitioner to deposit Rs, 10 lakhs within a period of three weeks in my view, the order was passed under wrong impression created by learned counsel for the petitioner. Accordingly, order dated 17.07.1996 is recalled. Learned

counsel for petitioner seeks permission to withdraw the application. The prayer is allowed. This application is dismissed as withdrawn”

(emphasis supplied)

3.10. On 03.08.1996, the possession of the borrower’s mortgaged property was handed over to the auction purchaser.

3.11. During the pendency of the declaration suit before the Trial Court, the borrowers filed another writ petition, being CWJC No.3472 of 1997, seeking the relief of quashing the auction sale dated 18.03.1996 and restoring possession of the auctioned unit to them. The said writ petition, *vide* order dated 05.05.1998, stood dismissed as withdrawn with a direction to expeditiously dispose of the pending suit, preferably within 6 months.

3.12. Based on the pleadings, in Civil Suit, the Trial Court framed following issues for adjudication:

- “1. After the suit as framed is not maintainable?
2. Whether the plaintiff is have got valid cause of action for the suit?
3. Whether the suit is barred by law of limitation as well as by the provisions of the Bihar state Financial corporation?
4. Whether the suit is barred by principals of estoppel waiver and acquiescence?
5. Whether the suit is barred by the provisions of specific Relief Act?
6. Whether the suit is barred by law of resjudicata?
7. Whether the Auction sale dated 18.03.1996 and the delivery of possession given to the intervenor on the very of possession given to the intervenor on the suit property is void and fit to be set aside?
8. Whether the plaintiffs are entitled to be put back into possession over the suit premises?
9. Whether the defendant no.1 and 2 had noright to auction sale the suit property u/s 29 and 30 of the Bihar state Financial corporation Act?
10. What other relief or releft are the plaintiffs entitled to?”

3.13. The Trial Court, *vide* order dated 19.05.1999, decreed Title Suit No.39 of 1996 in part. The findings returned on the relevant issues, in short, are as follows:

(a) **Issue No.9:** In view of the High Court's order dated 06.11.1990, BSFC had every right to sell the borrower's mortgaged property. The Court had granted liberty to the Corporation to proceed with the sale of the mortgaged property in case the borrowers were to default in depositing any of the instalments.

(b) **Issue Nos.7 & 8:** It was apparent through the records that prior to inviting tenders, neither any valuation of the mortgaged property was done nor any intimation sent to the borrowers in that context, evident from the testimony of the manager of BSFC (DW3); BSFC failed to prove that the borrowers were served with the notice dated 17.04.1996 calling upon them to match the terms of the tender/auction sale; BSFC allowed the auction purchaser to deposit the auction money in instalments and provided them financial accommodation, which relief could also have been granted to the borrowers, essentially when they had already paid about Rs.15 Lakhs till then; such action shows unreasonableness and unfairness on the part of BSFC; and lastly, the delivery of possession was held to be not done in a proper manner, for two reasons:- **(a)** BSFC handed over the possession without any proper measurement or demarcation, thereby creating uncertainty as to the extent of the land transferred i.e., whether it included unmortgaged part of the property or not; and **(b)** possession was delivered to the auction purchaser without receiving full auction sale consideration.

(c) **Issue No.6:** The suit was not barred by the law of constructive *res judicata*. Although the High Court had permitted BSFC to proceed with the sale of the mortgaged property, however, the question as to whether they acted fairly, reasonably and in accordance with law throughout the auction process remained open for examination by the Trial Court.

(d) **Issue Nos.3, 4 & 5:** The said issues were not raised during the hearing of the case, as such, the issue was decided in favour of the borrower.

(e) **Conclusion:** The suit was decreed in part with costs. The auction sale dated 18.03.1996 was set aside and consequently the title and interest of the borrowers over the mortgaged property was declared affirmatively. Delivery of the possession to the auction purchaser was declared void and BSFC was directed to handover possession of the suit premises to the borrowers within a period of two months.

3.14. Assailing the judgment of the Trial Court, only BSFC preferred First Appeal No.268 of 1999 and the auction purchaser filed First Appeal No.272 of 1999, before the High Court, wherein the following points for consideration were framed:

“(i) Whether the decisions of the co-ordinate Bench of this Court in C.W.J.C. No. 6104 of 1990 operates as *res-judicata* or constructive *res-judicata* in the present suit?

(ii) Whether the auction sale in question is in accordance with law?

(iii) Whether property in question was undervalued or the reserve price was fixed on a lower side?

(iv) Whether the auction sale dated 18.03.1996 and delivery of possession to the intervenor/defendant/appellant of the suit property is according to law and in terms of Section 29 and 30 of the Act?

(v) Whether the suit filed by unregistered firm is barred under Section 69(2) of the Partnership Act, 1932?"

Significantly, the borrowers accepted the findings of fact returned *qua* Issue No.1 by either filing an appeal or raising the point in the appeal.

3.15. Both these first appeals were dismissed *vide* the common impugned judgment and order dated 18.03.2025, wherein it was held as under:

“42. The decision of this Court in writ jurisdiction is with regard to the repayment of loan amount by the borrower and the present suit has been filed for certain reliefs as well as setting aside auction sale in favour of intervenor/appellant. The order of this Court is only with regard to the mode of payment of loan amount. This Court had not decided finally all issues involved in the present case. However, this Court vide order dated 05.05.1998 passed in C.W.J.C. No. 3472 of 1997 had directed for early disposal of Title Suit No. 39 of 1996. Moreover, this Court had never stopped the proceedings of present Title Suit in view of order passed in different writ proceedings while directing for speedy disposal of Title Suit. The question of resjudicata or constructive resjudicata will not apply in the present fact of the case. Therefore, the suit is not barred by Principle of Resjudicata or Constructive Resjudicata.

....

54. In the background of action/steps taken by the Corporation in the auction sale proceedings, the Corporation has not filed any documents which justifies the reserved prices of the Unit under Sale, no minutes of meeting relating to auction purchase of the plaintiffs' Unit to show that the auction sale property was duly assessed to secure optimum realizable value of the property. The Corporation has completely failed to prove its obligation before selling the property. ... It appears from the said exhibits that no auction sale took place on 18.03.1996 as per advertisement dated 02.03.1996 (Exhibit-D). It is apparent that no public auction took place on 18.03.1996. The auction was finalised in the office of the Managing Director of the said Corporation on 03.04.1996 ... The sale order (Exhibit-C/6) bearing Memo No. 807 dated 10.05.1996 was issued by the Financial Corporation. On that basis, the Unit in question was taken into possession on 03.08.1996 without making payment of the balance cash consideration money as required under the advertisement dated 06.03.1996. The manner in which the sale has been conducted (Exhibit-D and Exhibit-C/4) and sale order (Exhibit-C/6) was passed, it appears that the Corporation, respondent nos. 3 and 4 (First Appeal No. 272 of 1999) acted unfairly and contrary to the advertisement adversely affecting the interest of the plaintiff/respondents in selling the Unit contrary to their own ... office

order dated 01.08.1994 for OTS scheme. However, the plaintiff/respondents had already paid Rs. 14,98,996/- (Exhibit-H, ledger of the Corporation) out of loan advanced of Rs. 11,65,000/-. The mortgaged property measuring an area of 5 kathas and its building were sold at a very small price without assessing the value of the property.

.... ...
59. In view of the above, the auction sale on 18.03.1996 pursuant to tender notice dated 02.03.1996 is without finalizing the reserve price of the mortgage unit. It is apparent from the record that there is no assessment of valuation of mortgage property on record and also DW-3 (Branch Manager) admitted that the mortgage property was not assessed by any approved Valuer. It is also apparent from the record that the reserve price was fixed on the basis of outstanding dues on the mortgage which is not the real value of the suit property. However, registered/approved Valuer assessed the property in question at Rs. 76,12,543/-. The corporation has failed to do so. The substantial injury to the plaintiff/respondents would amount to material irregularity and ultimately vitiates the subsequent proceeding. ...

.... ...
62. The bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a 3rd party in the course of business dealing with such 3rd party. If the unregistered firm is a party or has not entered in connection with the business of unregistered firm with a 3rd party, the bar of Section 69(2) will not apply. In the present case, the contract between plaintiffs and defendant corporation was not one entered into by the unregistered firm as in the course of its business dealing with the defendants so viewed, the bar of Section 69(2) cannot apply to the suit filed by the plaintiff/respondents.

63. In the light of the narrative and discussions above, in my opinion the auction sale is bad in law. The tender notice published in the newspaper without taking the possession of the unit by the corporation is in violation of the procedure. It is also evident from the material on record that the reserve price was fixed without assessment of valuation of the suit property. No approved Valuer has submitted any report with regard to the value of the property. The unit in question was sold only against the due in favour of corporation. The auction sale dated 18.03.1996 was not done on that day, the sale order was issued by the Managing Director on the basis of negotiations with the appellant intervenor/defendant which is against the spirit and purpose of auction."

(emphasis supplied)

3.16. Aggrieved thereof, both BSFC in SLP(C) Nos.16552-16553 of 2025 and the auction purchaser represented by his legal heirs in SLP(C) No.24073 of 2025 have preferred appeals before us.

SUBMISSIONS

4. The appellant, BSFC, has submitted that the borrowers who are habitual defaulters have perpetually failed to honour their commitments and contractual obligations. Despite repeated notices and opportunities being given to them, the outstanding dues remained unpaid; since the borrowers have consistently defaulted in the past, hence they cannot claim parity with the auction purchaser, seek up financial accommodation; they have failed to avail any of the numerous opportunities extended to them to discharge their liability. In such circumstances, BSFC was fully justified in invoking its statutory powers under Section 29 of the SFC Act and proceeding with the sale of the mortgaged property in accordance with the statutory scheme.

5. The auction purchaser, adding to the submissions of BSFC, have contended that they are the *bona fide* purchasers of the suit property who, upon payment of the entire auction sale consideration, which fact stood acknowledged *vide* order dated 25.07.1996 passed by the High Court, have acquired a rightful title and possession over the suit property; also, that they have been in possession for nearly three decades. The principal grounds of challenge raised are that: **(a)** The title suit was barred by the principles of acquiescence, *res judicata*, as also by the bar operating u/s 69(2) of the Partnership Act, 1932; **(b)** The borrower's right of redemption of property stood extinguished upon the publication of the auction notice. Despite being granted ample opportunities by BSFC and the High Court, the borrowers failed to discharge their liability and remained a recalcitrant defaulter. Reliance is placed on *Orissa State Financial Corpn. v. Hotel Jogendra*⁸ and *M. Rajendran v. KPK Oils & Protiens India (P) Ltd.*⁹; **(c)** The

⁸ (1996) 5 SCC 357.

⁹ (2026) 3 SCC 505.

borrowers have repeatedly resorted to litigation with the sole object to delay the recovery proceedings, thereby abusing and misusing the process of law; and **(d)** Lastly, even assuming that certain procedural irregularities existed in the conduct of the auction sale, the same cannot defeat substantive statutory rights, particularly in the absence of any concrete proof of fraud or collusion. Reliance has been placed on *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*¹⁰, wherein this Court has reiterated that the procedural law is a handmaid of justice and not its mistress.

6. *Per contra*, the borrowers have submitted that the High Court has rightly affirmed the judgment of the Trial Court setting aside the auction sale. It is contended that although BSFC possessed the statutory power to sell the mortgaged property under Section 29 of the SFC Act, such power needs to be exercised fairly, reasonably and in accordance with law. It is further submitted that:

(a) BSFC acted arbitrarily and in collusion with the auction purchaser, which was detrimental to the interest of the borrowers, inasmuch as – **(i)** no public bidding took place on 18.03.1996 and the sale was ultimately finalized on the basis of private negotiations done by the Managing Director on 03.04.1996; **(ii)** prior to the publication of auction notice correspondences, dated 13.02.1995 and 22.08.1995, had been exchanged between BSFC and the auction purchaser concerning the proposed sale of the mortgaged property, which raises serious apprehension of collusion and a predetermined sale process; **(iii)** the mortgaged property was sold at an undervalued price without calling for any valuation report; and **(iv)** despite the borrowers having already repaid about Rs.16.50 Lakhs and expressing willingness to deposit Rs.10 Lakhs as per the terms of the auction, BSFC

¹⁰ (2022) 10 SCC 1.

had given preference to the auction purchaser and extended financial accommodation to them by permitting them to pay auction consideration in instalments while denying similar relief to the borrowers;

(b) The principle of *res judicata* will not apply in the facts of the present case as the orders passed by the High Court in CWJC No.6104 of 1990 or CWJC No.3472 of 1997 did not adjudicate upon the issue pertaining to the *validity of the auction sale*, which forms the subject matter of the present title suit; and

(c) The Courts below rightly held that the present suit was not barred by Section 69(2) of the Partnership Act 1932, since the borrowers had not sought enforcement of a contract entered with a third party in connection with its business. Reliance was placed on *Shiv Developers v. Aksharay Developers*¹¹ and *Purushottam v. Shivraj Fine Arts Litho Works*¹².

OUR VIEW

7. We have heard the learned senior counsel(s) appearing for the parties and perused the material placed on record. The sole issue that arises for our consideration is whether the Courts below erred in setting aside the auction sale, dated 18.03.1996, conducted by BSFC under Sections 29 and 30 of the SFC Act.

8. For ready reference, Sections 29 and 30 of the SFC Act 1951 reads as follows:

“29. Rights of Financial Corporation in case of default.—(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof [or in meeting its obligations in relation to any guarantee given by the Corporation] or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the [right to take over the management or possession or both of the industrial concerns], as

¹¹ (2022) 13 SCC 772.

¹² (2007) 15 SCC 58.

well as the [right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers *** under sub-section (1), shall vest in the transferee all rights in or to the property transferred [as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

[(4) [Where any action has been taken against an industrial concern] under the provisions of sub-section (1), all costs, [charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it [as incidental thereto] shall be recoverable from the industrial concern and the money which is received by it *** shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]

(5) [Where the Financial Corporation has taken any action against an industrial concern] under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of [the concern].

30. Power to call for repayment before agreed period.—Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation.”

9. A perusal of Section 29 of the SFC Act reveals that it provides the financial corporation, *inter alia*, with right to sell the assets of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to it. This right accrues when the industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof, or in meeting its obligations as envisaged in Section 29. A three-Judge bench of this Court, in *Haryana Financial Corpn. v. Jagdamba Oil Mills*¹³, has succinctly explained the object and scope of this Section in the following terms:

“6. The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

... ..
8. ... While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness.

9. In matters like the present one, fairness cannot be a one-way street. Corporations borrow money from the Government or other Financial Corporations and are required to pay interest thereon. Where the borrower has no genuine intention to repay and adopts pretexts and ploys to avoid payment, he cannot make the grievance that the Corporation was not acting fairly, even if requisite procedures have been followed.

... ..

¹³ (2002) 3 SCC 496.

13. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in *U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.* [(1995) 2 SCC 754] in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in *Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd.* [(1996) 5 SCC 65 : JT (1996) 6 SC 37] in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. ... Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.”

(emphasis supplied)

9.1. In *U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.*¹⁴, this Court held that the fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. It was observed that:

“10. It is true that the appellant-corporation is an instrumentality of the State created under the State Financial Corporations Act, 1951. The said Act was made by the Parliament with a view to promote industrialisation of the States by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a period not exceeding 20 years from the date of loan. We agree that the corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose — the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object

¹⁴ (1993) 2 SCC 299.

underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one. The above narration of facts shows that the respondents have no intention of repaying any part of the debt. They are merely putting forward one or other ploy to keep the corporation at bay. Approaching the courts through successive writ petitions is but a part of this game. Another circumstance. These corporations are not sitting on King Solomon's mines. They too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered — nay, determined, in the light of all these circumstances. Indeed, in a matter between the corporation and its debtor, a writ court has no say except in two situations: (1) there is a statutory violation on the part of the corporation or (2) where the corporation acts unfairly i.e., unreasonably. While the former does not present any difficulty, the latter needs a little reiteration of its precise meaning. What does acting unfairly or unreasonably mean? Does it mean that the High Court exercising its jurisdiction under Article 226 of the Constitution can sit as an appellate authority over the acts and deeds of the corporation and seek to correct them? Surely, it cannot be. That is not the function of the High Court under Article 226. Doctrine of fairness, evolved in administrative law was not supposed to convert the writ courts into appellate authorities over administrative authorities. The constraints — self-imposed undoubtedly — of writ jurisdiction still remain. Ignoring them would lead to confusion and uncertainty. The jurisdiction may become rudderless.”

(emphasis supplied)

9.2. In *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*¹⁵, this Court held that the reasonableness of the action of the Financial Corporation under Section 29 of the SFC Act should be tested against the dominant consideration to secure the best price. It was held as under:

“17. ... It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing

¹⁵ (2004) 7 SCC 166.

circumstances which reasonably probabalise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. (See *Pannalal Binjraj v. Union of India* [AIR 1957 SC 397] , AIR at p. 409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.* [(1993) 2 SCC 279] are no longer in place in view of the subsequent decision in *Haryana Financial Corpn. v. Jagdamba Oil Mills* [(2002) 3 SCC 496] . However, in overruling the decision in *Mahesh Chandra* [(1993) 2 SCC 279] this Court has affirmed the view taken in *Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd.* [(1995) 4 SCC 595] and said that in the matter of sale under Section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

“This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.”
(SCC p. 601, para 12)

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on “as-is-where-is basis” to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required.”

(emphasis supplied)

9.3. In *Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.*¹⁶, laid down the following legal principles governing the scope of Section 29 of the SFC Act:

“**19.** From the aforesaid, the legal principles that emerge are:
(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine

¹⁶ (2005) 4 SCC 456.

of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

- (a) there is a statutory violation on the part of the Corporation, or
- (b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

20. True, the exercise of the right by a Financial Corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether

the action of the Financial Corporation is bona fide or not would depend on the facts and circumstances of each case.”

(emphasis supplied)

9.4. This Court, in *Punjab Financial Corpn. v. Surya Auto Industries*¹⁷, while holding that the Financial Corporations being an instrumentality of the State is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests, held as under:

“21. The proposition of law which can be culled out from the decisions noted above is that even though the primary function of a corporation established under Section 3 of the Act is to promote small and medium industries in the State, but it is not obliged to revive and resurrect every sick industrial unit dehors the financial implications of such exercise. The Corporation is not supposed to give loans and refrain from taking action for recovery thereof. Being an instrumentality of the State, the Corporation is expected to act fairly and reasonably qua its borrowers/debtors, but it is not expected to flounder public money for promoting private interests.

22. The relationship between the Corporation and borrower is that of creditor and debtor. The Corporation is expected to recover the loans already given so that it can give fresh loans/financial assistance to others. The proceedings initiated by the Corporation and action taken for recovery of the outstanding dues cannot be nullified by the courts except when such action is found to be in violation of any statutory provision resulting in prejudice to the borrower or where such proceeding/action is shown to be wholly arbitrary, unreasonable and unfair. The court cannot sit as an appellate authority over the action of the Corporation and substitute its decision for the one taken by the Corporation.”

(emphasis supplied)

10. Keeping in view the above exposition of law pertaining to Section 29 of the SFC Act, we find it difficult to sustain the findings returned by the Courts below, holding that the auction sale conducted by BSFC was unfair, unreasonable, or arbitrary. This Court has consistently held that fairness is not a one-way street. Whether the action taken by a financial corporation was *bona fide*

¹⁷ (2010) 1 SCC 297.

and reasonable or not would depend on the surrounding circumstances. It is in this context that the following conduct of the borrowers assumes significance:

(a) Firstly, the borrowers miserably failed to discharge their obligation to repay the loan. BSFC repeatedly called upon them to clear their outstanding dues, however, the borrowers failed to do so. Rather than honouring their obligations, despite orders passed by the High Court, they chose to initiate successive rounds of litigation, including filing multiple writ petitions, spread over a period of eight years without any success, and a civil suit to obstruct the recovery process.

(b) Secondly, in CWJC No.6104 of 1990, the High Court settled the matter by mutual consent and, *vide* order dated 06.11.1990, fixed a detailed repayment schedule. However, the borrowers failed to adhere to it and deposited only a fraction of the required amount. Their subsequent application seeking extension of time was dismissed by the High Court, *vide* order dated 11.07.1991, wherein it was specifically observed that the borrower's conduct did not entitle them to any further indulgence. Although liberty was reserved to approach BSFC for settlement, but the same was never availed.

(c) Thirdly, the position became even more evasive when BSFC issued notice dated 27.09.1994 under Section 29 & 30 of the SFC Act. The said notice called upon the borrowers to discharge their liability in full, within three months. They were also informed that, upon failure to do so, BSFC would proceed to sell the mortgaged property through public auction, negotiation or any other mode permissible in law. Pertinently, the borrowers neither challenged the legality of the said notice nor complied with its terms, thereby allowing the recovery process to reach the stage of auction.

(d) Lastly, even after the auction process had commenced, BSFC, *vide* letter dated 17.04.1996, offered the borrowers another opportunity to retain the mortgaged asset by matching the terms of the tender and making payment in accordance therewith within 21 days. Admittedly, the respondent(s) did not respond to this notice even though they falsely pleaded non-receipt thereof. Instead, they approached the High Court by filing a writ petition, being CWJC No.6641 of 1996, seeking relief by way of injunction. It was only in those proceedings that an undertaking was furnished to deposit Rs.10 Lakhs, as per the terms of the auction but never showed the colour of money. In our considered view, such belated willingness cannot be equated with a genuine effort to discharge their liability; had the borrowers been genuinely interested in retaining the property, they could have matched the terms of the auction and complied with it.

11. The aforesaid circumstances, when viewed cumulatively, leaves little room for doubt that BSFC did not act unreasonably or in an unfair manner. On the contrary, the record reveals that several opportunities were afforded to the borrowers to discharge their liability and retain the mortgaged assets. It was only when the borrowers repeatedly defaulted in discharging their obligation that BSFC proceeded to sell the mortgaged property, in exercise of its power under Section 29 of the SFC Act. The fairness required of a financial corporation cannot be carried to the extent of disabling it from recovering what is due to them. As rightly held in *Jagdamba Oil Mills* (supra), while not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot, in the name of fairness.

12. The Courts below have concurrently decreed the suit of the borrowers holding that the action taken by BSFC was unreasonable and unfair, primarily on

the ground that the mortgaged property was not valued prior to being put to auction. In the peculiar facts of the present case, we are unable to agree that such omission, by itself, rendering the auction sale to be set aside. It is pertinent to note that the borrowers never objected to the basis of which the property was proposed to be sold at the time. The sale advertisement dated 02.03.1996 and letter dated 17.04.1996 which called upon the borrowers to match the terms of the offer, clearly stated that the auction consideration would be equivalent to BOS, i.e., the balance outstanding amount as on the date of handing over possession of the unit or execution and registration of the sale deed, whichever is earlier. More importantly, the borrowers themselves sought to retain the property on the very same terms that were offered to the auction purchaser, which fact is evident from order dated 17.07.1996 passed in CWJC No.6641 of 1996 wherein they undertook to deposit Rs. 10 lakhs. Having tried to avail the benefit of those specific terms, it does not lie in their mouth at a subsequent stage to contend that the absence of a valuation report, by itself, vitiated the entire process and caused them prejudice.

13. Even otherwise, the fairness of auction sale cannot be examined in isolation from the conduct of borrowers themselves. Undisputedly the borrowers had taken a loan to set up an industrial unit and had remained in persistent default since 1988 onwards. Despite repeated reminders and opportunities afforded by BSFC, no meaningful effort was made by the borrowers to discharge their liability. Left with no other option, BSFC issued 1st notice for auction on 24.11.1988 proposing to take over and sell the mortgaged property. The borrowers thereupon approached the High Court and conceded to regularize their account leading to the withdrawal/quashing of the notice dated 24.11.1988. However, the matter did not rest there. The borrowers continued to commit defaults, which led to the issuance of a similar subsequent auction notice on 27.09.1994. For more than eight years, the borrowers remained persistent defaulters and forced BSFC to

multiple litigation. Thus, in our considered view, the action so taken was fully in accordance with the statutory scheme and cannot be categorized as arbitrary or unreasonable.

14. Further, we find it untenable to accept the grievance of the borrowers that BSFC acted unfairly and arbitrarily by permitting the auction purchaser to pay the auction sale consideration in instalments, while denying similar accommodation to the borrowers. It is well settled that a financial corporation is an independent autonomous body having its own functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own right and take commercial decisions based on the information in its possession. [See: *U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.*¹⁸] The borrowers, in the present case, are recalcitrant defaulters who had repeatedly failed to discharge their liability. Hence, they cannot claim parity with the auction purchaser. In such circumstances, the decision of BSFC not to extend similar financial accommodation to the borrowers cannot be held to be arbitrary or *mala fide*, but must be viewed as a commercial decision taken in the ordinary course of business to recover its dues. In any event such a plea is fallacious for as is recorded in the order dated 25.07.1996 passed by the High Court that the entire sale consideration stood deposited by the auction purchaser. Between 18.03.1996, the date of auction sale, and 14.05.1996, the date of completion of sale, the option of matching up was given to the borrowers.

15. The conduct of the borrowers throughout suggests a consistent attempt to delay the recovery proceedings by initiating successive rounds of litigation. The borrowers first challenged the notification of sale dated 24.11.1988 in CWJC No.6104 of 1990; thereafter, upon default, sought extension of time to comply

¹⁸ (1995) 2 SCC 754.

with the repayment schedule; instituted Title Suit No.39/1996; filed CWJC No.6641 of 1996; and thereafter filed CWJC No.3472 of 1997. Such conduct shows that the borrowers continued to litigate at every stage while the outstanding dues remained unpaid, which was nothing but an abuse of process of law. At this juncture, it would be germane to refer this Court's observation in ***Orissa State Financial Corpn. v. Hotel Jogendra*** (supra), wherein it was held that – “*Public money is meant to be recycled to all the needy entrepreneurs. The dilatory tactics defeat the public policy and the court process becomes an instrument of abuse. Court would protect only honest and sincere litigants.*” These observations apply with full force to the facts of the present case. In our considered opinion, the borrowers never made any meaningful effort to discharge their liability despite being offered numerous opportunities. The conduct of the borrowers of embarking upon successive rounds of litigation, therefore, is one which disentitles them from claiming any equitable relief.

16. There is yet another reason why the auction sale ought not to have been set aside. Recently, a coordinate Bench of this Court in ***Celir LLP v. Sumati Prasad Bafna***¹⁹, underscored the well settled legal position that once an auction is confirmed, Courts must ordinarily refrain from setting it aside unless there is any material irregularity or if such sale was vitiated by any fraud or collusion. [See also: ***Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.***²⁰; ***Ram Kishun v. State of U.P.***²¹; ***PHR Invent Educational Society v. UCO Bank***²²] In the present case, the borrowers have failed to establish any fraud or collusion between BSFC and the auction purchaser. The correspondences dated 13.02.1995 and 22.08.1995, relied upon by the borrowers,

¹⁹ 2024 SCC OnLine SC 3727.

²⁰ (2008) 9 SCC 299.

²¹ (2012) 11 SCC 511.

²² (2024) 6 SCC 579.

exchanged between the auction purchaser and BSFC prior to the publication of the advertisement of the auction sale, does not establish any fraud or collusion. At best, the said letters merely indicate that the auction purchaser was interested in buying the suit property, well that about all. Pursuant to a public advertisement, the auction purchasers submitted their bid. Transaction is not cloaked in secrecy. In fact, there were two borrowers who participated in the private negotiations. Mere suspicion, in the absence of any cogent material, cannot lead to any inference of collusion. Pertinent here is to note that the auction process culminated in the execution of an agreement of sale-cum-payment of loan dated 07.06.1996 and the auction purchaser has remained in possession of the suit property for nearly three decades. The rights that have crystallized pursuant to a statutory sale cannot be lightly unsettled after such a long lapse of time, particularly in the absence of any established fraud, collusion or material illegality.

17. We are, however, unable to agree with the submissions advanced by the appellant(s) that the suit itself was barred by the principle of *res judicata* or by Section 69(2) of the Partnership Act. A perusal of the record confirms that the validity of the auction sale was never directly or substantially in issue before the High Court in CWJC No.6104 of 1990 and CWJC No.3472 of 1997. Likewise, the present suit was essentially filed against the statutory action taken by BSFC and was not seeking enforcement of any contractual right against a third party. Hence, neither the bar of *res judicata* nor the statutory bar contained in Section 69(2) of the Indian Partnership Act would operate in the facts of the present case. To that limited extent, we affirm the findings returned by the Courts below.

18. In view of the foregoing discussion, we are of the considered view that the Courts below erred in setting aside the auction sale dated 18.03.1996. The findings that the sale was vitiated on account of unfairness, arbitrariness or

illegality cannot be sustained in law and are accordingly set aside. Therefore, the appeals are allowed accordingly. The impugned judgment and order dated 18.03.2025 passed by the High Court of Judicature at Patna in First Appeal No.268 of 1999 and First Appeal No.272 of 1999, as well as the judgment and decree dated 19.05.1999 passed by the Trial Court in Title Suit No.39/1996, are set aside to the aforesaid extent.

Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANJAY KAROL)

.....**J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
JULY 9, 2026