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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20<sup>th</sup> MAY, 2025

IN THE MATTER OF:

+ **W.P.(C) 6296/2025 & CM APPL. 28710/2025 (Stay)**

**JATINDER KAUR SAWHNEY** .....Petitioner

Through: Mr. Parveen Kumar Mehdiratta, Adv.

versus

**CANARA BANK AND ORS.** .....Respondents

Through: Mr. Hitesh Sachar, Ms. Anju Jain &  
Ms. Poonam Kumari, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

**JUDGMENT (ORAL)**

**SUBRAMONIUM PRASAD, J.**

1. The present Writ Petition has been filed by the Petitioner challenging the Order dated 05.05.2025, passed by the Debt Recovery Appellate Tribunal (DRAT) in Misc. Appeal No.67/2025. *Vide* the said Order, the DRAT has upheld the Order dated 09.04.2025, passed by the Presiding Officer, DRT-II, Delhi, in SA No.129/2025.

2. Shorn of unnecessary details, the facts, leading to the present case, are as under:

- a. The Petitioner was married to one P.S. Sawhney, son of Respondent No. 2, on 22.12.1996, and has been residing at A-6, Nizamuddin West, New Delhi – 110003 (*hereinafter referred to as "subject property"*) since her marriage.



- b. The subject property comprises four floors i.e. Basement, Ground, First, and Second constructed over a plot measuring 646.58 sq. mts. (773.33 sq. yds). The Petitioner has been in occupation and physical possession of the Basement, Ground, and First Floors, which constitute her sole residential residence.
- c. Two daughters, namely Guneesha Sawhney, aged about 26 years and Aaleesha Sawhney, aged about 19 years, were born out of the said wedlock. The daughters have been residing with the Petitioner at the property since birth.
- d. The Petitioner is the daughter-in-law of Respondent No. 2. Respondent No. 3 (since deceased) and Respondent No. 4 are the aunties (*chachis*) of the Petitioner's husband. Respondents No. 2 to 4 are the joint owners of the subject property.
- e. Respondent No. 3 passed away on 13.06.2014, leaving behind her legal heirs, i.e., Respondents No. 3(a) to 3(c). Respondent No. 5 is the father-in-law of the Petitioner, while Respondents No. 6 and 7 are the uncles (*chachas*) of her husband.
- f. Respondents No. 2 to 7 are borrowers/guarantors/mortgagors in respect of loan facilities availed from Respondent No. 1 (the Bank).
- g. The Petitioner has obtained LIC policies, and both she and her daughters have renewed their passports from the said address. Additionally, they hold Voter ID cards, Aadhaar cards, savings bank accounts in ICICI Bank and American Express Bank, and mobile and electricity connections from the said address. It has been averred that this reflects a continuous chain of possession for the past 29 years.



- h. It has been averred that the subject property can be bifurcated into two units of approximately 2000 sq. ft each and the present market value of the entire property is estimated to exceed Rs. 70 crores. The front portion of the Second Floor is stated to be valued at around Rs.14 crores and each full floor valued at approximately Rs.28 crores.
- i. The Petitioner's relationship with her husband and in-laws has been strained ever since their marriage was solemnized and it has been averred that they have made attempts to evict her and her daughters from the premises.
- j. The Petitioner and her daughters continue to reside in and be in possession of the Basement, Ground Floor, and First Floor, while the back portion of the Second Floor is occupied by her husband, and the front portion has been in the possession of the Respondent Bank since 2013.
- k. The present dispute emanates out of non-payment of an overdraft facility initially sanctioned to Respondents No. 2 to 4 for Rs.4 crores. Subsequently this facility was extended to Rs.6 crores.
- l. Due to default in repayment of the said loan facility the Respondent Bank initiated proceedings under SARFAESI Act. The details of the SARFAESI proceedings are as follows
  - i. On 22.12.2012 Respondent bank issued notice under Section 13(2) of SARFAESI Act for recovery of Rs.4.68 Crores.
  - ii. On 28.03.2013 Petitioner filed SA No. 39/2013 before DRT, whereafter the DRT allowed Bank to take possession of front portion of second floor only.



- iii. On 02.09.2013 the DRT passed order directing the partial possession and sale of only a limited area of the subject property.
- iv. Pursuant to the said order the Respondent bank issued a letter dated 06.09.2013 to the Petitioner whereby the Respondent bank asked the Petitioner to handover the possession of Front Portion of Second Floor of subject property.
- v. Thereafter the Respondent bank on 21.09.2017 filed an application before CMM for appointment of Receiver to take physical possession of entire subject property. In response to the said order the Petitioner filed MA No. 155/2017 before the DRT-I in SA No. 39/2013.
- vi. Vide order dated 04.12.2017 DRT-I restrained the Respondent bank from taking over the possession of the Basement, Ground Floor and First Floor of the subject property.
- vii. On 13.04.2022 the Respondent bank obtained an order under Section 14 SARFAESI Act from CMM, South East District, Saket Court, for appointment of receiver to take possession of the entire subject property. Whereafter the CMM Court appointed Amit Kumar, Advocate, as the Court Receiver.
- viii. On 25.04.2022 the Court Receiver issued notice to the Petitioner to take possession of the subject property. Whereafter the Petitioner filed IA No. 1083/2022 in MA No. 155/2017 in SA No. 39/2013 before the DRT. The



DRT vide order dt. 18.05.2022 set aside the possession notice issued by the Court Receiver.

- ix. On 10.03.2025 order was passed by the Court of Chief Judicial Magistrate, South East District, Saket Courts, New Delhi appointing Advocate Ajay Saroha as Court Receiver. The Court Receiver on 25.03.2025 issued possession notice to the Petitioner. The said notice stated that possession of the subject property would be taken over by the Court Receiver on 14.04.2025.
  - x. Thereafter the Petitioner approached the DRT-II by filing SA No. 129/2025 on 07.04.2025 seeking that the Respondent bank be restrained from taking possession of the portions of the subject property which are in the possession of the Petitioner. The application was dismissed vide order dt. 09.04.2025 whereafter the Petitioner filed an appeal before the DRAT. Vide order dt. 05.05.2025 the DRAT upheld the order of the DRT and declined to interfere with the application filed by the Petitioner.
  - m. Thereafter the Petitioner had filed the present writ petition and has contended that the default and resultant proceedings are being used as a pretext to evict her and her daughters from the subject property.
3. It is stated by the learned Counsel for the Petitioner that the Petitioner along with her daughters has had continuous and uninterrupted possession over the subject property for over 29 years. He further states that this has been the sole matrimonial home of the Petitioner for over 29 years and she and her daughters have no alternative accommodation. It is submitted that at



the matrimonial home, being the daughter-in-law of the Respondent No. 2 to 7, the Petitioner has a bona-fide claim over the said subject property.

4. In a similar vein it has been contended on behalf of the learned Counsel for the Petitioner that the loan in question has been intentionally defaulted by her in-laws with an intention to dispossess her of her matrimonial home. It has been further averred that Respondent No.1 and her in-laws are acting in collusion.

5. The learned Counsel for the Petitioner contends that the Respondent No. 1 has been in possession of a saleable portion of the subject property since 2013. Vide order dated 02.09.2013 in SA No. 39/2013, the Respondent No. 1 was granted possession of / allowed to sell only the second floor of the subject property and the Petitioner had complied with the said order. However, irrespective of having been in possession of those portions of the subject property, the Respondent No. 1 has not auctioned off or sold those portions for recovery of their dues. As a result, the interest accrued on the initial loan amount has ballooned and now the bank is owed about Rs.27 Crore as opposed to a loan of Rs.4.68 Crore. This indicates their malafide intention and they cannot be allowed to take benefit of their own lackadaisical attitude.

6. In a similar vein the learned Counsel for the Petitioner has argued that the front section of the Second Floor that has been in possession of Respondent No.1 is presently worth over Rs.15 Crores, and more than adequate to meet the original demand of the outstanding loan. Even so, the bank has not tried to sell the portion it already owns and is rather trying to acquire full ownership of the entire subject property, which is presently worth more than Rs.70 Crores. It has been further contended by the learned Counsel for the Petitioner that the action of Respondent No.1 is unfair, *W.P.(C) 6296/2025*



excessive, and inequitable. The Petitioner is not against repayment of the loan but merely seeking that recovery be made out of the assets that are already available with Respondent No. 1 without removing her from her matrimonial home.

7. The learned Counsel for the Petitioner has also sought to draw the attention of the Court to proceedings before the DRT in SA No. 39/2013 and MA No. 155/2015 whereby the DRT had ordered interim protection against dispossession in favour of the Petitioner. The learned Counsel for the Petitioner argues that this reflects acceptance of her right to residence and it is on the strength of this order that a prayer for parity in treatment and grant of interim relief has been made. Therefore, the bank should be directed to recover the loan amount by selling the Second-floor portion first.

8. Learned Counsel for the Petitioner has also submitted that the demise of Respondent No. 3 i.e. Smt. Paramjeet Kaur Sawhney, who was one of the borrowers occurred on 13.06.2014 and despite being privy to her demise, Respondent No. 1 failed to bring on record her legal heirs before seeking any further judicial orders. Thus this omission, coupled with the failure of Respondent No. 1 to issue a fresh demand notice upon the death of Respondent No. 3, vitiates the proceedings under the SARFAESI Act and renders the previous demand notice *non est* in law.

9. The learned Counsel for the Petitioner has also submitted that the order dated 10.03.2025 passed by the learned CJM, South East District, Saket Courts, New Delhi was obtained on the basis of material suppression and concealment of facts by Respondent No. 1. The learned Counsel for the Petitioner contends that the Respondent failed to disclose that they were already in physical possession of the front portion of the Second Floor of the



subject property pursuant to an order dated 02.09.2013 passed by the DRT in S.A. No. 39/2013

10. *Per contra*, learned Counsel for Respondent No.1 states that the present writ petition deserves no consideration, as there is no legal infirmity in the order dated 05.05.2025 passed by the Hon'ble DRAT. He also submits that the order passed by the DRAT rejecting the prayer of the Petitioner is well within the provision of law and it requires no interference under Article 226 of the Constitution of India.

11. The learned Counsel for Respondent No.1 has also questioned the *locus standi* of the Petitioner as well as the maintainability of the present writ petition. He places reliance on Section 2(f) of the SARFAESI Act that defines "borrower". The learned Counsel for the Petitioner argues that the Petitioner would not be covered under the ambit of this definition as she is neither the owner nor the borrower, nor the mortgagor and does not have any tenancy rights in the subject property and as such, the present writ petition would not be maintainable. He builds this argument further by stating that it is an admitted position that the Petitioner has not entered into any loan agreement/guarantee agreement with the Respondent No.1 bank. Similarly, the Petitioner has failed to place on record a single document on the basis of which she is claiming title over the subject property.

12. Learned Counsel for the Respondent No.1 contends that the Petitioner and her family members have taken the following steps to ensure that the proceedings initiated under the SARFAESI Act are obstructed resulting in delay:

*"a) Smt. Amarjeet Kaur Sawhney the borrower, filed SA No.8 of 2013 before DRT Delhi for quashing of notice dated 02.08.2012 and also the possession notice*



*dated 13.03.2013. It is pertinent to mention that despite the orders in the said SA the borrower failed to make the payments. The said SA No. 8 of 2013 was dismissed for non-prosecution.*

*b) That after the dismissal of SA No. 8 of 2013, the Petitioner, the daughter in law of the borrower Smt Jatinder Kaur Sawhney filed SA No. 39 of 2013 before DRT Delhi. That vide order dated 28.03.2013 in the said SA No. 39 of 2013 the Hon'ble DRT while disposing off the matter in favour of the petitioner bank directed that initially the bank can sell Second floor front portion of the property in question. It is pertinent to mention that there is no further stay order passed by the Hon'ble DRT in the said matter.*

*c) That after SA no. 39 of 2013, the son of the borrower i.e. Parvinder Singh Sawhney filed a fresh SA No. 125 of 2013. It is pertinent to mention that there is no stay order or any other interim order against the bank in the said SA. It is further pertinent to mention that said SA was dismissed vide order dated 11.04.2025.*

*d) That after the dismissal of the SA No.39 of 2013 the Petitioner filed a fresh SA No.129/2025 whereby the interim relief was rejected vide order dated 09.04.2025 and the matter is now listed for 12.06.2025. the order of rejection dated 09.04.2025 was challenged in appeal before Hon'ble DRAT and dismissed vide order dated 05.05.2025 (i.e. the order is under challenge)."*

13. The learned Counsel appearing for Respondent No.1 has also argued that the Petitioner has not challenged the measures taken by Respondent No.1 with regard to recovery of amount which as on date are more than Rs.27 Crores. He also states that it is an admitted position that the loan documents have been verified by the DRT in OA No.572 of 2012, titled as W.P.(C) 6296/2025



Syndicate Bank vs Smt. Amarjeet Kaur Sawhney & Ors and “*Recovery Certificate*” has been granted in favor of Respondent No.1 by the DRT on 30.10.2013. This has not been challenged by the Petitioner or by Respondent Nos. 2 to 7.

14. He further states that it is also not the case of the Petitioner that loan in question was not availed of or the dues, of the bank, if any, were paid off. SARFAESI Act is a special legislation that has been enacted with the purpose of recovery of loan and enforcement of security interest and it overrides general laws. In the facts of the present case the Petitioner being the daughter in law of the borrower's family cannot assert any right over the subject property as admittedly there is no title document with respect to subject property in favor of the Petitioner. Therefore, the Petitioner cannot be allowed to defeat the legitimate right of Respondent No. 1 to recover its dues in accordance with law.

15. The learned Counsel appearing on behalf of Respondent No. 1 bank has also contended that the current writ petition is an attempt to re-agitate issues that have been settled in multiple SARFAESI proceedings and have been filed in collusion with the original borrowers and guarantor and has been guised as an independent claim. He also states that in earlier rounds of litigation between the Petitioner/her family members and the Respondent No.1 with respect to the subject property, similar objection has been raised and duly rejected by the Tribunal.

16. He points out that the first SA was filed by Smt. Amarjeet Kaur Sawhney, the borrower, before DRT Delhi for quashing of notice dated 02.08.2012 and was dismissed by the DRT. Thereafter, the Petitioner, i.e., the daughter-in-law of the borrower, Smt. Jatinder Kaur Sawhney, filed SA No. 39 of 2013 before DRT Delhi. Vide order dated 28.03.2013, the DRT *W.P.(C) 6296/2025*



disposed of the matter in favor of Respondent No. 1 bank and directed that initially the bank can sell the second-floor front portion of the subject property. Subsequently, the son of the borrower, i.e., Parvinder Singh Sawhney, filed a fresh SA No. 125 of 2013. This was dismissed vide order dated 11.04.2025. Thereafter, the Petitioner filed a fresh SA No. 129/2025, wherein interim relief was rejected vide order dated 09.04.2025, and the matter is now listed for 12.06.2025. The order of rejection dated 09.04.2025 was challenged in appeal before the DRAT and dismissed vide the impugned order. Therefore, the Petitioner is acting in tandem and collusion with her in-laws and the present writ petition is an attempt to frustrate the process of law and a non-borrower or a third party cannot be permitted to forfeit the statutory scheme and framework of SARFAESI Act.

17. Heard the learned Counsels for the parties and perused the material on record.

18. The principal contention of the Petitioner is that she has acquired a legitimate interest in the subject property and in particular the basement, ground floor, and first floor by virtue of her uninterrupted residence and therefore she cannot be dispossessed by the bank under the proceedings initiated under the SARFAESI Act particularly when the bank is already in possession of the front portion of the second floor since 2013 and has acted in a malafide manner and in collusion with Respondent No. 2 to 7. This Court is unable to agree with the contention advanced by the learned Counsel for the Petitioner.

19. Section 2 (f) of the SARFAESI Act, 2002 reads as under:

*“2(f) “borrower” means [any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956*



*(42 of 1956) which,] has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution [and includes a person who, or a pooled investment vehicle which,] becomes borrower of a [asset reconstruction company] consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance [or who has raised funds through issue of debt securities];”*

20. A perusal of the above definition indicates that the word “borrower” can be any person or company who is granted financial assistance by any Bank or Financial Institutions, they must have given any guarantee or created any mortgage or pledge as a security for financial assistance granted by any Bank or Financial Institution and includes a person who becomes a borrower of Securitisation Company or Reconstruction Company upon acquisition by it of any rights or interest of any Bank or Financial Institution in relation to such assistance.

21. In the present case the Petitioner clearly doesn’t fall under the category of a borrower. Furthermore, she is neither a co-borrower, guarantor, or a registered tenant. Therefore, she does not have any locus to challenge the notice of possession issued by the CMM or file the present Petition. Furthermore, it cannot be said that her long standing possession of the subject property has created any enforceable rights under the SARFAESI Act. The Petitioner cannot be allowed bypass SARFAESI proceedings under writ jurisdiction of this Court.

22. The Apex Court in South Indian Bank Ltd. v. Naveen Mathew Philip, (2023) 17 SCC 311 has held as under:



*“13. A writ of certiorari is to be issued over a decision when the court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque [Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1954) 2 SCC 881 : (1955) 1 SCR 1104] : (SCC pp. 898-900, paras 24-27)*

*“24. Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. Ltd. v. Commercial Employees' Assn. [Parry & Co. Ltd. v. Commercial Employees' Assn., (1952) 1 SCC 449] , G. Veerappa Pillai v. Raman & Raman Ltd. [G. Veerappa Pillai v. Raman & Raman Ltd., (1952) 1 SCC 334] , Ebrahim Aboobakar v. Custodian of Evacuee Property [Ebrahim Aboobakar v. Custodian of Evacuee Property, (1952) 1 SCC 798] and quite recently in T.C. Basappa v. T. Nagappa [T.C. Basappa v. T. Nagappa, (1954) 1 SCC 905] . On these authorities, the following propositions may be taken as established:*

*24.1. Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*

*24.2. Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its*



*undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*

*24.3. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.....*

*14. The object and reasons behind Act 54 of 2002 are very clear as observed by this Court in *Mardia Chemicals Ltd. v. Union of India* [*Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311]. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression “any person”, who could approach the Tribunal.*

*15. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come*



*within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the non-compliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.*

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*18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.” (emphasis supplied)*

23. Applying the law laid down by the Apex Court in the aforesaid judgment, it can be seen that Courts are not expected to substitute themselves with the decision-making authority when they are reviewing their action. The adjudicatory framework under the SARFAESI Act seeks to facilitate smooth and expeditious recovery of security interests. The mechanism provided under the act is fair and reasonable. The writ jurisdiction of this Court cannot be allowed to be used to circumvent prescribed statutory mechanisms or to re-agitate settled issues by giving them the colour of individual dispute. The Respondent No.1 has acted strictly in accordance with its statutory rights and obligations under the SARFAESI Act. The Petitioner has failed to demonstrate any justifiable grounds to warrant the interference of this Court under its writ jurisdiction.



Similarly, the Order of the DRT and subsequent Order of DRAT are well reasoned and do not require the interference of this Court.

24. The contention of the Petitioner that her estranged husband and his family members have actually colluded with each other in order to dispossess her from the property in question does not merit acceptance in various proceedings initiated by the family members of the husband of the Petitioner. In any event, The right of residence can be exercised by the Petitioner against her husband by taking appropriate remedies under other provisions of law which enable the Petitioner in getting an accommodation. It is stated that as of today Rs.27 crores is due and payable by the borrowers to the Bank. Possession of 29 years alone would not be sufficient to enable the Petitioner to maintain the Petitions before various forums under the SARFAESI Act to assert her rights to the disadvantage of the interests of the Bank.

25. The Petitioner, who admittedly does not fall within the ambit of a borrower, mortgagor, guarantor and possesses no legally enforceable statutory right under the SARFAESI Act cannot invoke the writ jurisdiction to obstruct or override recovery proceedings. Her principal contention is that she has acquired an interest in the subject property due to occupying the same for an uninterrupted period of 29 years. However, in the absence of any statutory basis for her claim, and being unaccompanied by any title, or tenancy rights the Petitioner cannot claim protection from proceedings under a special statute like SARFAESI or ask that she not be evicted merely because she is living in the subject property.

26. The averments made by the Petitioner regarding suppression of material facts and fraud have not been substantiated by any cogent evidence whatsoever. On the contrary, material on record shows that multiple



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recovery actions have been adjudicated and dismissed by the DRT and DRAT. Admittedly, the DRT, in OA No. 572/2012, issued a Recovery Certificate in favour of the Bank on 30.10.2013. The said recovery certificate remains unchallenged. Thereafter for almost a decade the recovery proceedings have been kept pending before the DRT and DRAT on account of multiple proceedings initiated by the Petitioner and her relatives. The Petitioner appears to have been acting in tandem with her in-laws and husband to delay and frustrate the recovery proceedings by re-agitating the same claim and guising them as individual cases.

27. Therefore, this Court is of the view that no grounds have been made out by the Petitioner to warrant the interference of this Court with the impugned order of the DRAT dated 05.05.2025 under Article 226 of the Indian Constitution.

28. Resultantly, the petition is dismissed, along with pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**HARISH VAIDYANATHANSHANKAR, J**

**MAY 20, 2025**

*Rahul/VR*