

SARFAESI Act, Sections 13(2) and (4) – Conduct – Repeated positive acts of the borrower post the notices under Sections 13(2) and (4) of the SARFAESI Act – Action on the Subject Property was delayed by more than a year as at the behest of the Borrower, the Bank gave them a long rope to regularise the account – To ignore the conduct of the Borrower would not be reasonable to the Bank once third party rights have been created – In this background, the principle of equitable estoppel as a rule of evidence bars the Borrower from complaining of violation. Not only did the Borrower not question or object to the action of the Bank, but it by express and deliberate conduct had asked the Bank to compromise its position and alter the contractual terms – The Borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank by giving indulgence, time and opportunities – The Borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions – Even if we are to assume that the Borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and laches, which aspects are material.

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