HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.18237 OF 2015

ORDER: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Writ Petitioner Nos.1 and 2 are guarantors for the loan contracted by respondent No.2 from respondent No.1 - The Karur Vysya Bank Limited, Rashtrapathi Road, Secunderabad. Respondent No.3 herein is auction purchaser in the bid conducted by respondent No.1.

2. Originally, writ petitioners sought the prayer for grant of *mandamus* by declaring the orders, dated 17-04-2015, in Criminal M.P. No.489 of 2015, passed by the learned Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act'), as illegal, arbitrary and violative of Article 14 of the Constitution of India; and consequently, to direct respondent No.1 not to dispossess them from the residential house bearing No.8-3-222/C/13/10 till the disposal of appeal preferred by them pending with the Debts Recovery Appellate Tribunal, Kolkata. Later, by the orders, dated 25.08.2015, in W.P.M.P. No.34848 of 2015, they amended the prayer in

relation to consequential relief, thus:

> "Consequently direct the 1st respondent bank to release the title deeds in respect of the residential house bearing no. 8-3-222/C/13/10, A-49, Madhuranagar, Yousufguda, Hyderabad, in favour of the 2nd petitioner forthwith in view of the payment of Rs.1,84,20,000/-, made by the petitioner being the maximum bid price at which the said property was auctioned by the 1st respondent bank, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case, in the prayer of the main Writ Petition No. 18237 of 2015 on the file of this Hon'ble Court and pass such other orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

3. Facts in brief are that the respondent No.2 (hereinafter referred to as 'borrower') contracted a loan from respondent No.1 (hereinafter referred to as 'bank') for its business purposes, for which the petitioners (hereinafter referred to as 'guarantors') stood as guarantors by mortgaging the residential house bearing No.8-3-222/C/13/10, A-49, Madhuranagar, Yousufguda, Hyderabad. When the borrower committed default in repayment of the loan amount, the bank initiated measures under the Act, which culminated in issuance of e-tender auction notice, way back in the year 2014, dated 15.03.2014. Aggrieved by the said measure, the guarantors filed W.P. No.12366 of 2014 on 21.04.2014 questioning the said

e-tender auction notice, this Court initially granted interim relief by the order, dated 23.04.2014, directing the bank not to confirm the sale without prior permission, while allowing the bank to proceed with the auction sale pertaining to item Nos.1, 4 and 5 of the auction notice. Respondent No.3 (hereinafter referred to as 'auction purchaser') became the successful bidder, and, thus, deposited the initial 25% of the bid price. Later, the writ petition was disposed of by the order dated 01.08.2014 requiring the guarantors to avail the effective alternative remedies under the Act.

4. The guarantors, accordingly, approached the Debts Recovery Tribunal, Hyderabad, challenging the e-tender notice dated 15.03.2014 and also the auction sale conducted on 24.04.2014 by the bank in favour of the auction purchaser as illegal under the Act. Along with the Securitization Application, i.e., S.A.I.R. No.611 of 2014 before the Debts Recovery Tribunal, Hyderabad, an application to condone the delay of 77 days and another application to stay all further proceedings including confirmation of sale and handing over possession pursuant to the said auction were filed. The Tribunal having heard both the stay and delay petitions, dismissed the delay condonation petition in I.A. No.3288 of 2014 in S.A.I.R. No.611 of 2014 on 15.12.2014, thus, disposing of the application four months after arguments were heard.

5. While the things stood thus, the bank issued notice dated 27.12.2014 requiring the guarantors to vacate and deliver the vacant possession within a period of seven days and the said action was challenged in W.P. No.253 of 2015 and this Court granted stay for four weeks by order dated 13.01.2015, and in the meantime, the guarantors preferred appeal before the Debts Recovery Appellate Tribunal, Kolkota, and thereby, withdrew W.P. No.253 of 2015 on 23.02.2015.

6. The guarantors contend that the property is not properly valued and, though, it fetches three crores of rupees, the bank sought to recover at one crore rupees by selling away residential property by fixing sale price of Rs.1,84,20,000/-. Incidentally, they complained that notices under Rule 8(6) read with 9(1) of the Act, were not served, and, thus, mandatory requirement was not complied with as per the principles laid down by the Hon'ble Supreme Court in **Mathew Varghese v. M. Amritha Kumar and others**[1].

They have also stated that the conditional order passed by the Tribunal in S.A. No.520 of 2013 was also challenged in

W.P. No.12366 of 2014 and the said S.A. is pending in Debts Recovery Tribunal, which was filed questioning the possession notice under the Act.

7. The guarantors state that the bank obtained orders, in Criminal M.P. No.419 of 2015, dated 17.04.2015, and an Advocate-Commissioner has approached them to take physical possession along with a warrant issued to him, by which time, they were yet to receive the copy of the order dated 17.04.2015. Stating that there is no regular Presiding Officer to hold proceedings in Debts Recovery Tribunal and only in-charge arrangements have been made and since there is imminent threat of dispossession, they approached this Court seeking the aforesaid relief originally made and the amended relief.

8. This Court by order dated 23.06.2015 given interim direction to the bank not to confirm the sale in favour of the auction purchaser by imposing condition to deposit a sum of Rs.1,84,20,000/- within a period of three weeks and also for filing counters. The said condition to deposit the amount was extended by one more week by the orders dated 14.07.2015 and it is not in dispute that the said condition was complied with. Now, the request of the guarantors is to direct the bank to release the title deeds concerning the subject property in view of payment of Rs.1,84,20,000/-, which was the bid price in the auction held on 24.04.2014.

9. Bank filed counter on 17.08.2015 resisting the said request. The bank states that in the e-auction held

on 24.04.2014, the auction purchaser has paid 25% of the bid amount, i.e., Rs.46,05,000/- and in view of the interim orders of this Court, the auction purchaser did not pay balance sale consideration. The bank has also referred to W.P. No.12366 of 2014 and S.A.I.R. No.611 of 2014 filed by the guarantors, petition to condone the delay and the guarantors becoming unsuccessful as the delay condonation petition was rejected and the dismissal of W.P. No.253 of 2015.

10. Concerning the plea of auction purchaser, the bank states that the auction purchaser issued notices to it (bank) expressing his willingness to pay the balance of $3/4^{th}$ amount, as the entire litigation created by the guarantors, were set at rest, but, however, required that it (bank) has to get him the vacant possession of the property for making the balance $3/4^{th}$ amount, on which, it (bank) has issued a befitting reply stating therein that the auction purchaser cannot delay the payment in view of the continuous litigation and cannot put a condition that the payment will be made subject to handing over vacant possession, and, thus, given time to make such payment on or before 15.03.2015, failing which, it expressed that the $1/4^{th}$ amount paid by him will be forfeited. It is stated that the auction purchaser has not made payment as demanded. The bank states that it has received Rs.1,84,20,000/- paid by the guarantors abiding by the

orders of this Court and the said amount was adjusted to the loan account of the guarantors and the borrower. The bank also states that after deducting the payment of Rs.1,84,20,000/- from the loan account of the borrower, still, borrower and guarantors are liable to pay Rs.17,94,88,712-04 ps as on 31.07.2015 with subsequent interest thereon, as they are jointly and severally liable to pay. While stating that the liability of the guarantors being co-extensive with that of the borrower, the guarantors cannot escape their liability by taking back the title deeds without paying the balance amount, as such, they are not entitled to seek a direction to release the title deeds of the auctioned property, and sought to dismiss the writ petition.

11. The auction purchaser filed affidavit stating that a few minutes before the commencement of the auction process, the bank orally stated to him about the pendency of W.P. No.12366 of 2014 and the result of the auction would be subject to the said writ petition and after the completion of the bidding process, he was informed that he became the highest bidder and conveyance of the confirmation/ rejection of the sale will be communicated to him as the bank was at liberty to accept or reject the bid. It is according to him that having learnt the same on 25.04.2014, he made a representation to the bank that he was intending to deposit 25% of the bid amount and treat the same as term deposit in no lien account and the said

amount be appropriated by the bank as and when the *lis* between the bank and the guarantors is cleared and final sale certificate is issued by the bank. He also expressed his willingness to pay the balance consideration after clearing the *lis* and bank takes physical possession of the subject property. The auction purchaser also states that he had adequate funds in his account to pay the balance amount and relevant details were mentioned in the affidavit. Referring to the letter dated 23.04.2014 issued to it (bank) to pay the balance amount of Rs.1,38,15,000/- within a period of 15 days and in case of failure on his part to pay the balance amount, it would forfeit initial 25% of the bid price, he states that he has given a reply dated 20.02.2015 requesting the bank to sell the property without any encumbrance. He has also referred to letters, dated 23.03.2015, addressed to the bank and the letter dated 28.02.2015 and the rejoinder communication dated 04.03.2015 threatening him that the bank would forfeit Rs.46,05,000/- if the balance amount was not paid on or before 15.03.2015 by initiating proceedings under Rule 9(5) of the Act. Thus, referring to other details, the auction purchaser, while expressing his intention to deposit balance sale consideration immediately after the bank takes possession of the subject property, states that in case the bank for any reason cannot continue the same, to return the money with prevailing rate of interest.

12. Heard Sri G. Sampurnaanand, learned counsel for the petitioners - guarantors, Sri P. Rajesh Babu, learned counsel for respondent No.1 - bank, and Sri Srinivas Bodduluri, learned counsel for respondent No.3 - auction purchaser.

13. The learned counsel for the guarantors would submit that the guarantors have complied with the conditional order of this Court, dated 23-06-2015, by depositing Rs.1,84,20,000/- (Rupees one crore eighty four lakhs twenty thousand only), which matches the bid price, and the petitioners being guarantors, requested to release the title deeds with the bank. It is also his submission that the sale certificate was not issued and respondent No.3 being the auction purchaser has not deposited the balance bid amount of 75%, and, therefore, it is his request that the title deeds be released in favour of the guarantors.

14. Learned counsel for the bank submits that the bank has received the total amount of Rs.1,84,20,000/- deposited by the guarantors by abiding the orders of this court and also acknowledged and adjusted the same to the loan account of the guarantors and the borrower. Concerning the claim of the auction purchaser, learned counsel for the bank would submit that the auction purchaser,

while expressing the readiness and willingness to pay the balance $3/4^{th}$ amount, imposed a condition that the bank has to get him vacant possession of the building property; for which, suitable reply was issued stating that such a condition cannot be put by the auction purchaser, and granted time till 15-03-2015 to make deposit of $3/4^{th}$ balance amount; and in case of failure, the bank has expressed its intent to forfeit the $1/4^{th}$ amount deposited initially. So, it is according to him that, as the auction purchaser committed breach, the bank is at liberty to forfeit the $1/4^{th}$ bid price i.e., Rs.46.05 lakhs.

15. Learned counsel for the auction purchaser would submit that the auction purchaser was always ready and willing to deposit balance $3/4^{th}$ bid price amount, but, in view of the pendency of proceedings initiated by the guarantors one after another and obtaining interim orders, there was no occasion for the auction purchaser to deposit $3/4^{th}$ amount and the bank is not justified to put the condition to deposit the balance amount on or before 15-03-2015 by threatening to forfeit $1/4^{th}$ bid price already deposited.

16. During the course of arguments, learned counsel has drawn our attention to the letter addressed by the auction purchaser, dated
14-03-2015, as a reply to the letter issued by the bank,

dated
04-03-2015. The purport of the said letter is that the auction purchaser has requested the bank to consider his case sympathetically in the interest of equity, fairness and justness and also ultimately on humanitarian grounds, to see that his hard earned money and total life's savings are not forfeited for no fault on his part. He has also requested the bank that if it feels fit and proper, he was even ready to accept the refund of the amount deposited by him for the property under auction.

17. The auction purchaser is not disputing the contents of the letter, dated 14-03-2015, addressed by the bank. Nowhere the auction purchaser has made a demand for refund of the 1/4th bid amount with interest. Only during the course of proceedings, the auction purchaser has come forward demanding to pay interest on Rs.46.05 lakhs, which was deposited on 23-04-2014 and 25-04-2014, respectively. According to him, he suffered on account of litigations between the guarantors and the bank, as it would have fetched interest, in case, it was invested elsewhere.

18. Firstly, we would like to observe that when the proceedings initiated by the guarantors in different fora were either dismissed as withdrawn or disposed of, there was time for the auction purchaser to deposit 3/4th bid

price, which he did not do. Further, in the letter, dated 14-03-2015, addressed by the auction purchaser, while expressing his readiness and willingness subsequent to disposal of various proceedings to pay 3/4th balance bid price, still, imposed a condition that requiring the bank to deliver vacant possession of the building property, which is, contrary to the provisions of sub-rule (5) of Rule 9 of the Rules. In fact, the said Rule mandates that if the auction purchaser fails to deposit balance bid amount within 15 days from the date of issuance of sale certificate, initial deposit of 1/4th amount shall be forfeited. But, keeping in view, the circumstance that the petitioners being the guarantors have deposited the entire bid price of the secured asset and also keeping in view the letter, dated 14-03-2015, addressed by the auction purchaser above referred to, we are inclined to accede to the request of the guarantors, directing the bank to release the title deeds relating to the secured asset. The bank is further directed to return the 1/4th bid price of Rs.46.05 lakhs to the auction purchaser deposited by him. We are making it clear that no interest is awarded on the amount of Rs.46.05 lakhs, which is directed to be refunded to the auction purchaser.

19. Accordingly, the Writ Petition is allowed to the extent indicated above. We make no order as to costs.

20. As a sequel thereto, Miscellaneous Petitions, if

any, pending stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 8, 2015.

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[1] Civil Appeal No.1927-1929 of 2014 arising out of SLP 214330-21435 of 2010 dated 10.02.2014.