

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA
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WRIT PETITION No.19227 OF 2015

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ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

In this writ petition, the petitioners seek a direction by way of *Mandamus* declaring the letter, dated 19-03-2014, issued by the respondents - State Bank of Patiala as illegal and, consequently to direct the respondents to refund 25% of the earnest money i.e., Rs.9,25,000/- (Rupees nine lakhs and twenty five thousand only) deposited by them with interest at the rate of 18% per annum from the date of deposit till the date of payment.

2. The Authorized Officer of the respondents - bank issued an 'e-auction sale notice' on 12-02-2014, which was published in Hyderabad Edition of Times of India Daily Newspaper, dated 15-02-2014, in exercise of powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') for sale of immovable property i.e., factory land and building, admeasuring Acs.2-00 covered by Survey No.531, situated at Reddypally village, Chegunta Mandal

and Gram Panchayat in Medak District, which was mortgaged by original borrower - M/s Bansal Re-rolling Mills Private Limited as security for the loan obtained.

3. Reserve price was fixed at Rs.36,80,000/- (Rupees thirty six lakhs and eighty thousand only) and the Earnest Money Deposit (EMD) at Rs.3,68,000/- (Rupees three lakhs sixty eight thousand only), and on-line e-auction was scheduled to be held on 19-03-2014 between 11.00 A.M. and 1.30 P.M. In the auction held on 19-03-2014, the petitioners, who offered the bid amount at Rs.37,00,000/- (Rupees thirty seven lakhs only), were declared as highest bidders. As per the terms and conditions of the e-auction, on the same day, they have deposited 25% of the bid amount i.e., Rs.9,25,000/-, but failed to deposit the remaining amount.

4. It is the case of petitioners that, subsequent to the date of auction, they came to know about electricity consumption arrears to the tune of Rs.13,45,088/- (Rupees thirteen lakhs forty five thousand and eighty eight only) payable by the borrower to the Andhra Pradesh Central Power Distribution Company Limited (APCPDCL), Medak. It is also stated that though APCPDCL addressed a letter, dated 11-10-2012, requesting the respondents - bank to include the said arrears in the auction or pay the same before putting the property to auction, the same was not included

in the e-auction notice. Precisely, it is the case of the petitioners that, without notifying the amount in the e-auction notice towards arrears of electricity consumption charges, as contemplated under the Rules, the respondents conducted the auction and confirmed the bid offered by the petitioners. After knowing the same, the petitioners requested the respondents bank to refund the amount of Rs.9,25,000/-, which they have deposited towards 25% of the bid amount, which the respondents refused.

5. The Assistant General Manager of respondent No.2 has filed counter affidavit. While denying various allegations made by the petitioners, it is stated that the petitioners were informed about the conditions of e-auction, dated 12-02-2014, wherein it is clearly mentioned that the property put for auction was factory land and building constructed in an area of Acs.2-00 covered by Survey No.531, situated at Reddypally village, Chegunta Mandal and Gram Panchayat in Medak District and not the defunct industrial undertaking, which is in existence in the land, and that the notified property would be sold 'as is where is' condition; before participating in the auction, the petitioners could have made diligent enquiries. At the same time, in the counter affidavit, in categorical terms, it is averred that in e-auction notice the amount of electricity

consumption arrears due to the APCPDCL, Medak, was not included.

6. Heard Sri S.V. Rama Krishna, learned counsel for the petitioners and Sri Sunder Kanaparthi, learned Standing Counsel appearing for the respondents.

7. Perused the averments of writ petition, counter affidavit and the material on record.

8. For sale of immovable secured assets under the Act, rules viz., 'Security Interest (Enforcement) Rules, 2002' (for short 'the Rules') are framed. As per Rule 8 (6) of the Rules, if the sale of secured asset is being effected, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,___

- (a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) the secured debt for recovery of which the property is to be sold;
- (c) reserve price, below which the property may not be sold;
- (d) time and place of public auction or the time after which sale by any other mode shall be

completed;

- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property.

9. In this case, it is not in dispute that the respondents being secured creditors have not given particulars of encumbrances known to them and other information as required under Rule 8 (6) of the Rules. On perusal of sub clauses (a) and (f) of sub-rule (6) of Rule 8 of the Rules, it is clear that in public auction notice, secured creditor has to give details of encumbrances known to it and also any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property. It is not in dispute that there are arrears to the tune of Rs.13,45,088/-, which was known to the respondents, but such particulars were not mentioned by it in the e-auction notice. Had the respondents mentioned the same, the intending purchasers would have offered their bids by taking note of such arrears payable to the APCPDCL, Medak. It is true that in the e-auction sale notice, the notified immovable property is only land and building, but not the industrial undertaking. Further, as per the terms

and conditions of the agreement, between the management and the APCPDCL, Medak, unless arrears of electricity consumption charges are cleared, subsequent purchaser is not entitled to seek fresh electricity service connection or restoration of existing service connection.

10. In that view of the matter, we are of the view that the very e-auction sale notice issued by the respondents is in contravention of Rule (8) (6) of the Rules, as such, the petitioners are entitled for refund of the amount deposited by them towards 25% of the bid amount. At the same time, we are of the view that it is not fit case to grant interest on the said amount as claimed by the petitioners.

11. Accordingly, the Writ Petition is allowed, directing the respondents - bank to refund the amount of Rs.9,25,000/- (Rupees nine lakhs and twenty five thousand only) to the petitioners which was deposited by them towards 25% of the bid amount, within a period of six (06) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

12. As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition, stand disposed of.

R. SUBHASH
REDDY, J

A. SHANKAR NARAYANA, J

September 10, 2015.

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