

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT PETITION Nos.10178 and 16998 of 2015

DATE: 23.07.2015

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Between :

M/s.Knovus Steels and Infrastructure Limited, Hyderabad,
Rep. By its Managing Director.

.....Petitioner

And

State Bank of India, Stressed Assets Management
Branch, Khairatabad, Hyderabad & others.

.....Respondents.

For petitioner : Sri C.Raghu, Advocate.

For Respondents 1 & 2 : Sri B.S.Prasad, Advocate.

For Respondent No.3 : Sri D.Prakash Reddy,
Senior Counsel, Appeared for
Sri Avinash Desai, Advocate.

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> Head Note:

? CITATIONS:

1. (2014) 5 SCC 610
2. AIR 2007 SC 998
3. 2014 (3) ALD 120

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COMMON ORDER : (Per Justice R. Subhash Reddy)

As the subject matter in these two writ petitions is common and parties are same, both these writ petitions are heard together and are being disposed of by this common order. For the purpose of disposal, we refer to the facts and parties as stated and arrayed in W.P.No.16998 of 2015.

2. The writ petition in W.P.No.16998 of 2015 is filed seeking a Writ of Mandamus, to declare the action of 2nd respondent in conducting auction on 14.03.2015 with regard to landed property of the petitioner to an extent of Ac.40-20 gts. and in issuing sale certificate bearing No.SAMB/PRB/13, dated 04.04.2015, in favour of respondent No.3 in exercise of powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Securitisation Act'), as illegal and arbitrary, mainly on the ground that the procedure adopted

in conducting the auction is in contravention of Section 13 of the Securitisation Act and Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002.

3. Petitioner is a Company incorporated in 2007, under the Indian Companies Act, 1956. It is the case of petitioner that the objective of the Company is to establish a Mini Integrated Steel Plant at Bhongir in Nalgonda District. For the purpose of setting up the Plant, petitioner-Company has acquired the aforesaid land admeasuring Ac.40-20 gts., situated at Wadaparthi village of Bhongir Mandal in Nalgonda District.

4. The petitioner-Company has approached the consortium of banks for financial facilities for procuring the machinery etc. The 1st respondent-bank is the lead bank. All the consortium banks have provided financial assistance to the petitioner for procuring machinery etc., for which, the petitioner-Company has created security interest in favour of the 1st respondent-bank. It is the case of the petitioner that though the petitioner has intended to establish the Mini Steel Plant, the Plant could not be established on account of protest from the local people against setting up of Steel Plant. On the other hand, it is the case of 1st respondent-Bank that having availed the funds, the petitioner, without establishing the industry, has embezzled the funds. For the purpose of disposal of

these writ petitions, it is not necessary to go into the said aspect.

5. When the petitioner-Company was irregular in repaying the loan and defaulted in payment, the 1st respondent-Bank has initiated proceedings under the Securitisation Act. At first instance, the Bank has issued demand notice under Section 13(2) of the said Act on 07.10.2013, demanding for payment of an amount of Rs.13,41,46,375/-. When the petitioner has failed to comply with such demand, further steps are taken and has taken possession of secured interest. In the possession notice, the amount due to the 1st respondent-Bank is shown at Rs.13,41,46,375/-, and the amounts due to other consortium banks are also mentioned in the said notice as Rs.6,74,28,024.22 ps. to State Bank of Patiala and Rs.6,24,63,995.32 ps. to State Bank of Hyderabad, and thus, the total amount due to the consortium of Banks was shown as Rs.26,40,38,394.54 ps. After taking possession of the secured asset, notice for sale dated 05.02.2015 was sent to the petitioner proposing to sell the secured asset on 10.03.2015 and it was also published in the newspapers. Subsequently, a corrigendum dated 11.02.2015 was published on 12.02.2015, changing the date of auction sale to 14.03.2015 instead of 10.03.2015. In the auction held on 14.03.2015, the 3rd respondent emerged as highest bidder, offering an amount of Rs.1.84

Crores. On 16.03.2015, the authorized officer has sent a communication at about 5.52 p.m. to the 3rd respondent to pay 25% of the bid amount immediately and the balance 75% on or before 30.03.2015. Accordingly, the 3rd respondent has paid 25% of amount on 17.03.2015 and the balance 75% on 30.03.2015.

6. After auction was held on 14.03.2015, petitioner has addressed to the 1st respondent-Bank, a communication dated 24.03.2015, stating that the amount fetched in the auction was much less than the market value and has shown readiness to bring a purchaser, who intends to purchase the very same property for an amount of Rs.2.05 Crores, by depositing the same in 'no lien account'. On receipt of said letter dated 24.03.2015 on 25.03.2015, the 2nd respondent has responded on the very same day, asking the petitioner to deposit Rs.2.05 Crores on next day i.e. 26.03.2015, so as to examine the proposal of the petitioner. In the letter addressed by the 1st respondent-Bank, it has also stated that the 3rd respondent has already remitted 25% of the sale amount and it would be difficult to consider the petitioner's request. As the petitioner did not bring any purchaser as stated in the representation dated 24.03.2015, respondents 1 and 2 have proceeded further and after collecting balance 75% of bid amount by way of cheques

from the 3rd respondent, sale certificate was issued to him on 04.04.2015 and possession was also delivered on the said date.

7. In response to the representation made by the petitioner on 24.03.2015, when respondents 1 and 2 have asked the petitioner to deposit Rs.2.05 Crores and granted time up to 26.03.2015, the writ petition in W.P.No.10178 of 2015 is filed on 08.04.2015, questioning the action of 1st respondent-Bank in granting only one day time for payment of Rs.2.05 Crores.

8. Though the sale was confirmed and possession was delivered to the 3rd respondent on 04.04.2015, without taking any steps by approaching the Debts Recovery Tribunal as contemplated under Section 17 of the Securitisation Act, petitioner has filed the writ petition in W.P.No.16998 of 2015 on 12.06.2015.

9. Heard Sri C.Raghu, learned counsel appearing for petitioner, Sri B.S.Prasad, learned counsel appearing for respondents 1 and 2 and Sri D.Prakash Reddy, learned Senior Counsel appearing for Sri Avinash Desai, counsel for respondent No.3.

10. Mainly, it is the case of the petitioner that sale of secured asset on 14.03.2015 by the 1st respondent-Bank is not in accordance with the procedure prescribed under

Section 13 of the Securitisation Act and Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. It is submitted by Sri C.Raghu, learned counsel for petitioner that as per the sale notice published on 05.02.2015, sale was to be held on 10.03.2015, but without issuing process afresh, auction was conducted on 14.03.2015, illegally. It is stated that before sale of secured assets, notice of sale as contemplated under Rule 8 of the Security Interest (Enforcement) Rules, is not served on the petitioner. It is further submitted that though auction was held on 14.03.2015, the 3rd respondent/auction purchaser has not deposited 25% of the bid amount on the date of auction as required under the Rules, but he has deposited only on 17.03.2015. It is the submission of the learned counsel that even the payment of remaining 75% amount on 30.03.2015 by way of cheques is also not in accordance with law and Rules referred above. Learned counsel, in support of his contentions, has placed reliance on the judgment of Hon'ble Supreme Court in **Mathew Varghese v. M. Amritha Kumar & others**^[1].

11. On the other hand, it is contended by Sri B.S.Prasad, learned counsel for respondents 1 and 2 that the petitioner-Company has borrowed huge amounts from the consortium of Banks led by the 1st respondent-Bank for establishing a Mini Integrated Steel Plant and has

embezzled the funds without establishing the said Plant and defaulted in paying the loan amounts, as such, the account of the petitioner was declared as Non-performing Asset (NPA) as per the guidelines notified by the Reserve Bank of India and the 1st respondent-Bank has initiated proceedings to recover the loan amount by selling the security interest as per the provisions under the Securitisation Act. It is submitted that the petitioner has not received the notices sent by the 1st respondent-Bank and all were returned with an endorsement 'addressee left' and as such, all notices were published in the newspapers. It is further contended that the very representation filed by the petitioner on 25.03.2015 itself shows that the petitioner is aware of all the proceedings initiated, and inspite of giving several opportunities, petitioner neither paid the amounts due nor brought any purchaser to purchase the notified asset for Rs.2.05 Crores as claimed by him, as such, after collecting the entire bid amount from the 3rd respondent, sale certificate was issued in his favour on 04.04.2015 and the same is in accordance with law. It is submitted that when the sale in favour of 3rd respondent was confirmed on 16.03.2015 at 5.52 p.m., he has paid 25% of the amount on the next day i.e. 17.03.2015 and paid the balance amount of 75% by way of cheques on 30.03.2015, and after encashing the said cheques, sale certificate was published by delivering

possession on 04.04.2015. It is further submitted that though there is effective alternative remedy under Section 17 of the Securitisation Act, petitioner has not availed the same, but filed the writ petition belatedly on 12.06.2015, questioning the sale. Learned counsel, in support of his arguments, has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Rosali v. Taico Bank & others**^[2].

12. Sri D.Prakash Reddy, learned Senior Counsel appearing for respondent No.3 submits that respondent No.3 is a *bona fide* purchaser of property for a valuable consideration of Rs.1.84 Crores and in the absence of any allegations of fraud etc., there is no reason to seek for setting aside the sale at this stage. It is further submitted by learned counsel that though auction sale was conducted on 14.03.2015, as it happened to be Saturday and the auction went on upto 8 p.m., and further, as there was a complaint by two third-party-participants complaining that access to the site was not provided to them within the scheduled time, inquiry was conducted and only thereafter, on 16.03.2015, the 1st respondent-Bank has informed the 3rd respondent through e-mail at 5.52 p.m. that he was declared as successful bidder and required him to comply with payment conditions, and accordingly, on the following day i.e. 17.03.2015, he paid 25% of bid amount through RTGS. It is further stated that

within 15 days thereafter i.e. on 30.03.2015, the balance amount of 75% was paid by the 3rd respondent by way of cheques, and after encashing the said cheques, sale certificate was issued on 04.04.2015 and possession was delivered, as such, the same is in accordance with law. It is submitted that though there is remedy of appeal before the Debts Recovery Tribunal within 15 days from the confirmation of sale within the meaning of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, as the petitioner has not availed such remedy, but approached this Court by filing the present writ petition, there are no grounds to interfere with the sale. In support of his contentions, he placed reliance on the judgment of Hon'ble Supreme Court in **Sadashiv Prasad Singh v. Harendar Singh & others** [\[3\]](#).

13. Having regard to the arguments advanced by learned counsel for the parties, the only aspect to be considered is whether sale of security interest in the auction conducted by the 1st respondent-Bank on 14.03.2015, is in accordance with the provisions of the Securitisation Act and the Rules made thereunder or not.

14. When the account of the petitioner was irregular and when he defaulted in payment of loan amount, 1st respondent-Bank has declared the account of the petitioner as non-performing asset and initiated

proceedings under the provisions of the Securitisation Act. From the material placed before this Court, it is clear that inspite of several opportunities given to the petitioner, petitioner has not availed the same to pay the debt due to the 1st respondent-Bank. It is also clear from the material placed on record that though all the notices like demand notice, possession notice, notice of sale etc. were addressed to the petitioner by registered post, the petitioner was evading service. It is also clear from the representation filed by the petitioner on 25.03.2015 that the petitioner is aware of all the steps taken by the Banks, including sale of security interest on 14.03.2015. From the material placed on record by the 1st respondent-Bank, it is clear that the notices sent to the correct address of the petitioner were returned with an endorsement that 'the addressee left', and as such, all the notices were published in the newspapers. In that view of the matter, it is not open to the petitioner to plead that he was not put on notice of sale of the security assets on 14.03.2015. Further, after taking possession of secured asset on 16.08.2014 under Section 13(4) of the Securitisation Act, notice prior to sale dated 30.08.2014 was issued and the same was returned with an endorsement 'addressee left'. The said notice is sent not only to the petitioner-Company but also to all the guarantors. Further, the e-auction sale notice dated 05.02.2015 was also sent to the petitioner's

address by registered post with acknowledgement due. Thereafter, e-auction sale notice was published in the newspapers on 05.02.2015 and as per the said sale notice, auction was notified to be held on 10.03.2015, but thereafter, a corrigendum was issued and published on 12.02.2015, postponing the e-auction sale from 10.03.2015 to 14.03.2015. It is the contention of the petitioner that as the date of auction is changed from 10.03.2015 to 14.03.2015, it is not open to the 1st respondent-Bank to proceed as per the e-auction notice published on 05.02.2015. Reliance is placed by the learned counsel for petitioner on the judgment of Hon'ble Supreme Court in the case of **Mathew Varghese** (1 supra), in support of his argument that no sale of immovable secured asset should be effected before expiry of 30 days' notice to the borrower. He also relied on the said judgment to substantiate his plea that once the sale has not taken place on 10.03.2015, it is not open to the 1st respondent-Bank to conduct sale based on the e-auction notice published in the newspapers on 05.02.2015. It is true, in the aforesaid judgment, the Hon'ble Supreme Court has held that no sale should be effected before expiry of 30 days' individual notice to the borrower and sale should not be effected before expiry of 30 days from the date on which such notice is published in the newspapers. In this case, there is material to show that all the notices right from the demand notice, were sent

to the correct address of the petitioner-Company by registered post with acknowledgement due, but the petitioner has evaded to receive such notices, and if the date of notice for sale is taken into consideration, it is clear that there is 30 days clear individual notice to the petitioner-Company. By avoiding to receive the notices sent by the 1st respondent-Bank, it is not open to the petitioner to plead that 30 days individual notice is not given before effecting sale of the secured asset. Even with regard to publication of e-auction notice, it is to be noted that e-auction notice was published on 05.02.2015 in newspapers, notifying the date of sale as 10.03.2015, but thereafter, a corrigendum is issued, which was also published in the newspapers on 12.02.2015, changing the date of auction from 10.03.2015 to 14.03.2015. Even the 30 days period is to be reckoned from the date of publication of corrigendum i.e. 12.02.2015 and, as much as auction was held on 14.03.2015, it cannot be said that auction was conducted without giving 30 days' time as contemplated under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002. As much as the date of sale is changed by issuing corrigendum on 12.02.2015 i.e. much before the date of auction, and further, auction is conducted on expiry of 30 days, the judgment in the case of **Mathew Varghese** (1 supra) will not support the case of petitioner, having regard to the facts in the present case.

15. Another contention of the petitioner that the 3rd respondent has not deposited 1/4th of the bid amount and also the remaining 75% bid amount within the time frame, also cannot be accepted. The 3rd respondent has offered his bid pursuant to e-auction notice by paying 10% of the reserve price as Earnest Money Deposit and auction was held on 14.03.2015. Though the bid of the 3rd respondent was highest, the sale was not confirmed in his favour on the same day as contemplated under Rule 9(2) of the Rules. As evident from the counter affidavit filed on behalf of respondents 1 and 2, the auction went on upto 8 p.m. on 14.03.2015, wherein, the 3rd respondent has remained as successful bidder, but as two participants in the bid have complained that they were not provided with access to the site within the scheduled time and that they offered more than the rate offered by the 3rd respondent, the 1st respondent-Bank has addressed the grievance of the other two bidders to the web service provider i.e. M/s.Auction Tigers, who conducted the auction, upon which, the auction providers have informed that the other bidders have not quoted the higher amount than what was quoted by the 3rd respondent. Thereafter only, they declared the 3rd respondent as successful bidder and accordingly, the 1st respondent-Bank has informed the 3rd respondent

through e-mail at 5.52 p.m. on 16.03.2015, declaring him as successful bidder and requiring him to comply with the payment conditions. On the following day, the 3rd respondent has made the payment of 25% i.e. Rs.28,80,000/- through RTGS. As per Rule 9(3) of the Security Interest (Enforcement) Rules, the purchaser shall immediately deposit 25% of the amount of sale price to the authorized officer. As per Rule 9(2) of the said Rules, the sale shall be confirmed in favour of the purchaser who has offered the highest price in his bid and the same shall be subject to further confirmation by the security creditor. Though sale was conducted on 14.03.2015, it could not be confirmed in favour of the highest bidder as required under Rule 9(2) of the Rules, in view of the objections raised by two third-party-bidders and the same came to be confirmed only on 16.03.2015 by sending e-mail at 5.52 p.m. It is true that the 3rd respondent has not deposited the 25% amount on 16.03.2015 and deposited such money only on 17.03.2015, but it was for the reason that by the time the 3rd respondent was informed on 16.03.2015 about the confirmation of sale in his favour, banks were closed, as such, on the next day itself, 25% condition is complied with by paying an amount of Rs.28,80,000/- by RTGS, thus, it is the case of respondents 1 and 2 that it conforms to Rule 9(3) of the Rules.

16. In **Taico Bank's** case (2 supra), relied on by the learned counsel for the 1st respondent-Bank, the word 'immediately' is interpreted, which is used in similar circumstances as used under Order 21 Rule 84 of CPC. In the said judgment, while interpreting the word 'immediately', the Hon'ble Supreme Court has held that the word 'immediately' has got two meanings; one indicating the relation of cause and effect and the other one the absence of time between two events. It is further held that in former sense, it means, proximately without intervention of anything as opposed to 'immediately' and in the latter sense, it means instantaneously. In the aforesaid judgment, when the banks were closed on the date of auction and when payment was made on next day, the Hon'ble Supreme Court has upheld and approved the same as in accordance with law. Further, from the language used under Rule 9(3) of the Security Interest (Enforcement) Rules, we are also of the considered view that 'immediately' is to be construed as without delay on the part of the purchaser. When the communication of confirmation of sale itself was at 5.52 p.m. on 16.03.2015 and when 25% amount is transferred on the next day during bank hours, it cannot be said that such deposit is not in accordance with Rule 9(3) of the Rules. When the very communication of confirmation is beyond the working hours of bank, the payment made on

17.03.2015 is to be taken as in conformity with Rule 9(3) of the Rules. Thus, we hold that payment of 25% of bid amount on 17.03.2015 is in conformity with law. Further, it is also not in dispute that the remaining 75% of the bid amount was paid on 30.03.2015 by way of cheques and only after encashing the same, sale certificate was issued by delivering possession to the 3rd respondent-purchaser on 04.04.2015. Even such payment also cannot be termed to be not in accordance with Rule 9(4) of the Rules.

17. Further, we are also of the view that as the petitioner is aware of the proceedings of sale and filed representation dated 25.03.2015 before the respondents, there is no reason for not approaching the Debts Recovery Tribunal under Section 17 of the Securitisation Act within the time stipulated. When sale was confirmed and sale certificate was issued in favour of 3rd respondent on 04.04.2015, without availing the effective alternative remedies available under Sections 17 and 18 of the Securitisation Act, the petitioner has filed this writ petition belatedly, only on 12.06.2015. In the judgment in **Sadashiv Prasad Singh's** case (supra 3), relied on by the learned counsel for 3rd respondent, the Hon'ble Supreme Court has held that the rights of auction purchaser in the property purchased by him cannot be extinguished except in cases where the purchase can be

assailed on the ground of fraud and collusion. This judgment also supports the case of respondents. Though the petitioner has deposited Rs.2.05 Crores subsequent to confirmation of sale in favour of 3rd respondent pursuant to orders of this Court and is given opportunity before sale is confirmed in favour of 3rd respondent, he could not avail the same. Without availing the opportunities given to him, merely on the ground that he has brought a purchaser for about Rs.2.05 Crores subsequent to confirmation of sale in favour of 3rd respondent-auction purchaser, the petitioner cannot seek either to declare the sale as illegal or to invalidate the sale certificate at this stage.

18. For the aforesaid reasons, we do not find any merit in both these writ petitions. Both the writ petitions are accordingly dismissed. No order as to costs.

However, we make it clear that if any money is deposited by the petitioner pursuant to the order, dated 09.04.2015, passed in W.P.M.P.No.13418 of 2015 in W.P.No.10178 of 2015, petitioner is entitled for refund of such amount without any interest.

Pending miscellaneous applications, if any, in both these writ petitions, shall stand closed.

R. SUBHASH REDDY, J

A.SHANKAR
NARAYANA, J

23rd July 2015

N.B:

L.R.Copy be marked.

(b/o)

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[\[1\]](#) (2014) 5 SCC 610

[\[2\]](#) AIR 2007 SC 998

[\[3\]](#) 2014 (3) ALD 120