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

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WRIT PETITION Nos.16729 AND 18411 OF 2015

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

These Writ Petitions are filed questioning the auction conducted by respondent Nos.1 and 2 for sale of the house property covered by R.S.No.302/3 admeasuring 320 Square Yards situated at Jangareddygudem Village and Mandal, West Godavari District, belonging to the petitioner, and the order, dated 01.04.2015, passed by the Collector and District Magistrate, West Godavari at Eluru, in exercise of powers conferred under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act').

For the purpose of disposal of these Writ Petitions, we refer to the facts as narrated in W.P.No.18411 of 2015.

The 4th respondent has borrowed certain amount from the

1st respondent – Bank and the petitioner stood as one of the guarantors for such loan by mortgaging the property in question belonging to him. In view of the default committed by the 4th respondent in repaying the loan amount, the 1st respondent – Bank has initiated proceedings under the Act. The amount fell due as on

04.06.2013 is Rs.14,71,772/-. After issuing Demand Notice and Possession Notice, the Bank has filed an application before the Collector and District Magistrate, West Godavari at Eluru, seeking possession of the mortgaged properties. The Collector and District Magistrate, in exercise of powers conferred under Section 14 of the Act, passed impugned order, dated 01.04.2015, authorising the Tahsildar, Jangareddygudem, to take possession of the mortgaged properties. Thereafter, by issuing public auction notice, the 1st respondent – Bank has conducted auction of the secured asset belonging to the petitioner on 13.06.2015, and in the said auction, it appears that the 7th respondent became the highest bidder and has paid Rs.15,50,000/- towards sale consideration. It is stated that in view of the interim orders passed by this Court, Sale Certificate is not issued in favour of the 7th respondent.

Though validity of the order, dated 01.04.2015, and the sale conducted on 13.06.2015 are questioned on several grounds, during the course of arguments, learned counsel for the petitioner has confined his arguments to two submissions. Firstly, it is submitted that though the secured asset belonging to the petitioner is covered by constructions, the 1st respondent – Bank has shown the said property as vacant site and has conducted auction by fixing the reserve price lesser than the actual price of the asset. Secondly, it is submitted that the auction conducted is not in accordance with the procedure contemplated under the Act and the Rules made thereunder. It is his specific contention that though it is mandatory on the part of the 1st respondent - Bank to issue notice of sale under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules'), without serving such notice and without granting 30 days time, the auction was conducted on 13.06.2015.

On the other hand, it is submitted by Sri B.S. Prasad, learned Standing Counsel for the 1st and 2nd respondents, that the property in question, which is mortgaged to the 1st respondent - Bank, is only a vacant site at the time of mortgage and as such, the property in question was sold as a vacant site only. It is further submitted that if any improvements are made on the mortgaged property, the petitioner is not entitled to the benefit of accession in view of the provision under Section 70 of the Transfer of Property Act, 1882. It is further submitted that as the petitioner was avoiding service of notice, service is effected by affixture at his residence during his presence and hence, it cannot be said that the petitioner was not served with notice of sale as contemplated under Rule 8 (6) of the Rules.

As it is not in dispute that the property mortgaged by the petitioner is only a vacant site as per the document, it is not open to the petitioner to question the sale on the ground that though constructions are made subsequent to mortgage, they are not mentioned in the auction notice. As per Section 70 of the Transfer of Property Act, if, after the date of mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession. As such, it is not open to question the auction on the ground that the constructions made are not mentioned in the auction notice. Even from a perusal of the photographs placed before this Court, it is clear that such constructions made by the petitioner are temporary in nature and hence, we are not inclined to accept the submission of the learned counsel for petitioner to set aside the auction on that ground.

Coming to the other contention of the learned counsel for petitioner, the sale of immovable secured assets is covered by Rule 8 of the Rules. As per Rule 8 (6) of the Rules, the authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets. Further, Rule 3 of the Rules provides the procedure for serving notice under Section 13 (2) of the Act and any other notice given in writing and served on the borrower or his agent. From a perusal of Rule 3 of the Rules, it is clear that notice shall be served by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice, actually or voluntarily resides, by registered post with acknowledgement due or by speed post or by courier or by any other means of transmission of documents like fax message or electronic mail service. Further, as per proviso to Rule 3 (1) of the Rules, where the authorised officer has reason to believe that the borrower or his agent is avoiding service of notice, the authorised officer is empowered to serve notice by affixing a copy of the notice at the outer door or some other conspicuous part of the house or building.

It is the specific case of the petitioner that no notice under Rule 8 (6) of the Rules is served on him. In the counter affidavit filed by the Chief Manager of State Bank of India, Jangareddygudem, except a mere denial of the allegations of the petitioner, nothing is stated about the attempts made by the 1st respondent – Bank to serve notice under Rule 8 (6) of the Rules on the petitioner as per the procedure contemplated under Rule 3 of the Rules. There is also no averment in the counter that the petitioner was avoiding service of notice on him. In the absence of taking any of the steps as indicated above, it is not open to the 1st respondent – Bank to serve notice by affixture and such procedure is contrary to law. Further, in the case of **Mathew Varghese v. M. Amritha Kumar and others**[1], the Honourable Supreme Court has held that service of 30 days clear notice to the borrower is mandatory. The ratio laid down by the Honourable Supreme Court in the aforesaid case also supports the case of the petitioner. Further, in spite of service of notice, there is no appearance on behalf of the 7th respondent – auction purchaser to oppose the petition.

For the aforesaid reasons, W.P.No.18411 of 2015 is allowed by declaring the auction conducted on 13.06.2015 as illegal. However, it is open to the 1st and 2nd respondents to take fresh steps in accordance with law by issuing necessary notice as contemplated under the Rules to realise the debt.

Further, we do not find any ground to interfere with the impugned order, 01.04.2015, passed by the Collector and District Magistrate, West Godavari at Eluru, under Section 14 of the Act. Accordingly, W.P.No.16729 of 2015 is dismissed.

Miscellaneous Petitions, if any, pending in these Writ Petitions, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR

NARAYANA, J

September 02, 2015

MD

[1] AIR 2015 SC 50