

* THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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+WRIT PETITION No.43082 of 2015

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% 06-04-2016

Mitra Educational and Welfare Society

... Petitioner

Vs.

\$ The Authorised Officer, State Bank of India,
Main Branch, GT Road, Srikakulam and another.

... Respondents

! Counsel for the petitioner : Sri T. Rajinikanth Reddy

Counsel for Respondents : Sri B.S.S. Prasad, SC for R.1
Sri M.V. Suresh,
Senior Counsel for Sri G.V.
Srirama Murthy for R.2

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> Head Note:

? Cases referred:

1. AIR 1971 SC 310

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

The petitioner sought for a Writ of *Mandamus* for declaring the action of the 1st respondent, the Authorised Officer of the State Bank of India, Main Branch, Srikakulam, in issuing e-auction sale notice dated 16.11.2015 without duly following the procedure prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"), particularly in collusion with the 2nd respondent, as arbitrary and illegal.

2. Heard Sri C. Raghu, learned Senior Counsel on behalf of Sri T. Rajinikanth Reddy, learned counsel for the petitioner, and Sri B.S.S. Prasad, learned Standing Counsel for the State Bank of India; and Sri M.V. Suresh, learned Senior Counsel on behalf of Sri G.V. Srirama Murthy, learned counsel for the 2nd respondent.

3. At the very outset, we need to observe that the plea taken by Sri M.V. Suresh on behalf of the 2nd respondent, that there was an allegation of collusion between the 2nd respondent and the 1st respondent is incredulous, appears to be a sound contention. The fact that the 2nd respondent also purchased the very same property on a previous occasion when the 1st respondent-Bank conducted sale and this time also he has emerged as the best bidder does not necessarily

and invariably lead to the conclusion that there was a collusion between the Authorised Officer of the State Bank of India, Srikakulam Main Branch, and the 2nd respondent. Fortunately, for us, Sri C. Raghu, learned Senior Counsel has not pressed this contention beyond this point.

4. The petitioner herein, an Educational Welfare Society, has availed certain financial benefits from the State Bank of India, Main Branch, Srikakulam. It has also provided collateral security by mortgaging the immovable property in favour of the bank. The loan account has not been properly cycled, as a consequence, the loan account came to be classified as a Non-performing Asset (NPA) and since the petitioner herein answers the description of '*borrower*' as defined under Section 2(f) of the SARFAESI Act and also in view of the fact that the State Bank of India answers the description of '*bank*' as defined under Section 2(1)(c) of the SARFAESI Act and the security interest created by them also answers the definition contained under Section 2(1)(z)(f) of the SARFAESI Act, the State Bank of India, the creditor, is entitled to take measures for securitization of the loan as provided for under Section 13 of the SARFAESI Act. Under sub-section (2) of Section 13 of the SARFAESI Act, the secured creditor is required to draw a demand notice calling upon the defaulting borrower to pay the entire outstanding liability. Accordingly, a notice was drawn under sub-section (2) of Section 13 of the SARFAESI Act on 30.11.2011 calling upon the petitioner herein to liquidate the outstanding liability of Rs.4,38,47,732/- within a period of 60 days from the date of receipt of the said notice. It appears that the petitioner paid certain amount and got the loan account regularized. Once again, the petitioner has committed default. Hence, the Bank has again classified the loan account as Non-performing Asset on 19.01.2013 and once again a notice under sub-section (2) of Section 13 of the SARFAESI Act demanding the petitioner to liquidate the entire outstanding liability

has been issued by the Bank. It is the claim of the petitioner that it has deposited a sum of Rs.30,00,000/- on 09.03.2013, another sum of Rs.30,00,000/- on 31.03.2013, a further sum of Rs.10,00,000/- on 08.06.2013, and a further sum of Rs.25,50,000/- subsequently. Since the outstanding liability has not been cleared, as demanded in the notice issued under sub-section (2) of Section 13 of the SARFAESI Act, the bank has proceeded in the matter by taking up the follow up action as contemplated and provided for under sub-section (4) of Section 13 of the SARFAESI Act and has taken possession of the secured asset on 03.05.2013. For the purpose of realizing the loan amount, the secured asset was sought to be sold and hence a sale notice as is required and provided for under Rule 8(6) r/w. Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity "the Rules") was issued on 04.12.2013. The same was also got published in the Newspapers on 05.12.2013. It appears, auction was conducted and Sale Certificate was also issued in favour of the purchaser on 07.01.2014. Then the petitioner approached the Debts Recovery Tribunal, Visakhapatnam, and the said Tribunal, by order dated 12.02.2014 in S.A.No.245 of 2013, set aside the sale by auction, including the issuance of Sale Certificate. The Bank has approached the Debts Recovery Appellate Tribunal at Kolkata, and the appeal preferred by it bearing No.48 of 2014 was dismissed by order dated 04.12.2014, upholding the view taken by the Debts Recovery Tribunal, Visakhapatnam. That is how, on the second occasion, the sale by e-auction mode has to be initiated once again. A sale notice dated 16.11.2015 was issued, it was got published in Hindu Newspaper of Issue dated 18.11.2015. The auctions were conducted on 23.12.2015 between 11.30 a.m. to 12.30 p.m. The Reserve Price was fixed as Rs.3.60 Crores and the Earnest Money required to be deposited was Rs.36,00,000/-, being 10% of the upset price. The bid increment amount was fixed at Rs.10,000/-. In the auctions so conducted, the 2nd respondent once again participated and also emerged as the best

bidder and his offer of Rs.3,60,10,000/- was found to be the most responsive offer, as no other bidder has come forward to purchase the property. It is this sale notice, which came to be challenged in this writ petition.

5. When once the petitioner answers the description of '*borrower*' and the secured creditor answers the description of the '*bank*' as defined in the SARFAESI Act, the measures undertaken by it for securitization of the loan account under Section 13 of the SARFAESI Act cannot be faulted. This time around, the sale notice issued on 16.11.2015 was also published in the newspapers on 18.11.2015 and the e-auctions were conducted on 23.12.2015, thus maintaining more than 30 days time variation as is required under Rule 8(6) r/w. Rule 9(1) of the Rules referred to supra. In principle, therefore, we cannot find fault, in any manner, with the sale of the secured asset conducted by the 1st respondent-Bank.

6. However, one submission made by Sri C. Raghu, learned Senior Counsel, requires to be taken into account and requires consideration. He would urge that the petitioner has a right to redeem the mortgaged property by paying the money, which it has fetched in the e-auction mode.

7. Since, every mortgager has a right to redeem the mortgaged immovable property, at any time before the sale of it is held, in accordance with law, and the title thereof is conveyed to the purchaser, he can redeem the mortgaged property. This is a settled principle of law and if one really requires an authority, the ratio laid down by the Apex Court in MATHURALAL vs. KESHAR BAI AND ANOTHER^[1], last 4 lines of para-15, and para-16 is a complete answer. This apart, the Parliament has also noticed this valuable right of the mortgager and hence incorporated the same in the form of sub-section (8) of Section 13 of the SARFAESI Act, which reads as under:

13. Enforcement of Security Interest :-

(1) to (7)

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

8. Thus, the secured creditor can be tendered the dues any time before the date fixed for transfer of the secured asset in favour of the auction purchaser, in such an event, no further steps shall be taken by the secured creditor for transfer of that secured asset. In our opinion, the crucial expressions to be noticed, in this regard, are “*that secured asset*”. Therefore, for the whole of the entire loan transaction availed by a borrower and if he has created different security interests in different movable/immovable properties by using the expression “*that secured asset*”, an option has been provided to the borrower to retrieve that particular secured asset, which is sold by the secured creditor, like in the instant case, where more than one collateral security has been created by the borrower as the security for the loan availed and now only one such security interest has fallen for sale by e-auction mode, the right of the borrower to retrieve that secured asset cannot be denied. For retrieving that particular secured asset, it may not be really necessary for the borrower to liquidate the entire outstanding liability in the loan account and it is enough, if he pays the value fetched at the sale/public auction of that particular secured asset and retrieve it. But, at the same time, the incidental costs, charges and expenses, which the bank may have incurred for undertaking the securitization measures, may also have to be tendered.

9. Hence, apart from repayment of Rs.3,60,10,000/-, which is the price offered and paid by the 2nd respondent herein for the secured

asset, which was sold by the 1st respondent on 23.12.2015, the petitioner shall also pay the securitization expenses incurred by the bank and also such expenses in the form of compensatory costs to the 2nd respondent for the monies deposited by him in the form of interest, not exceeding @ 9% per annum, on or before 09.05.2016. The 1st respondent and/or State Bank of India, Main Branch, Srikakulam, shall not register the Sale Certificate already issued in favour of the 2nd respondent with regard to the secured asset sold on 23.12.2015. Should the petitioner commit any default in paying the aforesaid monies on or before 09.05.2016, the bank would be at perfect liberty to register the Sale Certificate already issued in favour of the 2nd respondent, at his expenses and deliver vacant possession of the secured asset purchased by him.

10. Should the petitioner honour the commitment, which he made to this Court today, it is needless for us to observe that the Sale Certificate issued in favour of the 2nd respondent with regard to the secured asset shall be cancelled and possession of the secured asset should be restored to the writ petitioner.

11. Subject to the above direction, the writ petition stands disposed of. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

06.04.2016

NOTE: L.R. Copy be marked.
(B/O)
Msr

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