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

+ WRIT PETITION Nos.36652, 36625 & 38600 OF 2015

% Date: 10-02-2016

M/s. Sridhar Enterprises

.. Petitioner

v.

$ Bank of Baroda, ARM Branch,
Himayath Nagar, Hyderabad & 2 others

.. Respondents

! Counsel for the Petitioners : Sri G.K. Deshpande

^ Counsel for Respondent No.1 : Sri K. Mallikarjuna Rao

Counsel for Respondent No.2 : Sri Sharath Sanghi

< **GIST:**

> HEAD NOTE:

? **CASES REFERRED:**

1. (2013) 10 SCC 83

2. (2005) 4 SCC 120
3. [2014 (2) D.R.T.C. 27 (S.C.)]
4. (2010) 8 SCC 110
5. 2015 (1) ALD 202
6. 2015 SCC Online Hyd.273
7. (2008) 9 SCC 299
8. (2015) 5 SCC 574
9. (2009) 17 SCC 690

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HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.36652, 36625 & 38600 OF 2015

-

Between:

M/s. Sridhar Enterprises

.. Petitioner

AND

Bank of Baroda, ARM Branch,
Himayath Nagar, Hyderabad & two others ..
Respondents

DATE OF ORDER PRONOUNCED: 10-02-2016

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newpapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be

Marked to Law Reporters/Journals.

3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.36652, 36625 & 38600 OF 2015

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

Since subject matter of all these writ petitions and the parties are one and the same, they are being disposed of by this common judgment.

2. W.P. No.36652 of 2015 is filed by M/s. Sridhar Enterprises, represented by its proprietor Pathallapally Sridhar seeking *Mandamus* to declare the auction, dated 10-03-2015, conducted by respondent No.1 - Bank of Baroda, ARM Branch, Himayath Nagar, Hyderabad, and consequential issuance of Certificate of sale of moveable properties, dated 24-09-2015, in favour of respondent No.2 in respect of movable properties of the petitioner as unconstitutional, unjust, illegal and violative of principles of natural justice.

3. W.P. No.36625 of 2015 is also filed by the petitioner in

W.P. No.33652 of 2015 seeking *Mandamus* to declare the auction, dated 13-03-2015, and consequential issuance of sale certificate, document No.7414/15, dated 24-09-2015, in respect of immovable property admeasuring Acs.15-00, situated in Survey No.100/P, 100/VU, 100/LU, Jiyapally Village, Bibinagar Mandal, Nalgonda District, in favour of respondent No.2, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and in exercise of powers conferred under Section 13 of the Act read with Rule 12 of Security Interest (Enforcement) Rules, 2002 (for short 'Rules 2002') by respondent No.1 - Bank of Baroda, ARM Branch, Himayath Nagar, Hyderabad, as unconstitutional, unjust, illegal and violative of principles of natural justice, and to set aside the same.

4. W.P. No.38600 of 2015 is filed by Smt. Patalapally Atchamma, who is mother of P. Sridhar (proprietor of the petitioner in the former two writ petitions), seeking the very same relief of *Mandamus* to declare the auction, dated 13-03-2015, and consequential issuance of sale certificate document No.7415/15,
dated 24-09-2015, in respect of immovable property admeasuring Acs.10-00, situated in Survey No.100/P of Jiyapally Village, Bibinagar Mandal, Nalgonda District, in favour of respondent No.2, under the provisions of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and in exercise of powers conferred under Section 13 of the Act read with Rule 12 of Security Interest (Enforcement) Rules, 2002 by respondent No.1 - Bank of Baroda, ARM Branch, Himayath Nagar, Hyderabad, as unconstitutional, unjust, illegal and violative of principles of natural justice, and to set aside the same.

5. In the former two writ petitions, the petitioner is M/s. Sridhar Enterprises represented by its proprietor, P. Sridhar and in the latter writ petition, the petitioner is Smt. P. Atchamma. However, in all the writ petitions, respondent No.1 is Bank of Baroda, ARM Branch, Himayath Nagar, Hyderabad, and respondent No.2 is auction purchaser - Manne Subramanyam.

6. The facts stated in these three writ petitions are almost identical, as such, we would like to refer to the averments mentioned in W.P. No.38600 of 2015 for disposal of these matters.

i) M/s. Sridhar Enterprises, represented by its proprietor Sri P. Sridhar, which is petitioner in W.P. Nos.36652 and 36625 of 2015, availed certain financial facilities on 19-10-2010 from respondent No.1 - Bank of Baroda, Himayathnagar Branch, Hyderabad, (hereinafter referred to as 'Bank') for its business purpose. Bank sanctioned a cash credit facility to M/s. Sridhar Enterprises to the tune of Rs.190.00 lakhs and term loan of Rs.50.00 lakhs, on mortgaging immovable properties belonging to Sridhar, who is proprietor of Sridhar Enterprises, which are admeasuring Acs.15-00 in Survey No.100 and Acs.10-00 in Survey No.100, situate in Jiyapally village, Bibinagar Mandal, Nalgonda District (secured asset).

ii) Bank has initiated measures under the provisions of the SARFAESI Act for sale of the secured assets and put them to auction on 13-03-2015. Even, Bank has filed comprehensive recovery suit in O.A. No.397 of 2013 on the file of the Debts Recovery Tribunal, Hyderabad.

iii) The petitioners plead that they were never informed by the Bank as to result of the auction and no intimation was given to them about sale of the secured assets under e-auction notification,
dated 06-02-2015.

iv) According to the petitioners, in the last week of September 2015, when some unknown persons entered into the factory premises (secured assets) proclaiming that they purchased the same from the Bank and attempted to dispossess them from it, which was resisted by them successfully, but, they went back threatening that they would come again with the aid of police and take possession forcibly.

Even, Sridhar was summoned to the police station, where he was provided with copy of sale certificate, dated 24-09-2015, both in respect of movable and immovable secured assets, and with the help of police, respondent No.2 (hereinafter referred to as 'auction purchaser') took physical possession of the secured assets belonging to the petitioner in W.P. No.38600 of 2015 and her son - P. Sridhar.

When they sought for information as to auction of the secured assets, Bank did not furnish the same. Then, they obtained information under the Right to Information Act, 2005 (for short 'RTI Act') and, thus, they came to know that the secured assets were put to e-auction by the Bank and bids were opened on 13-03-2015 and that there was only one bidder, who is respondent No.2.

v) It is also stated that the Bank has addressed a letter, dated 04-08-2015, to the auction purchaser stating that he was successful bidder for the bid amount of Rs.85.00 lakhs and called upon him to pay balance amount of Rs.63.50 lakhs as Rs.21.50 lakhs was already paid. The statement of account furnished by the Bank would show that the amount of Rs.85.00 lakhs was deposited on 05-09-2015. Thereafter, they made another application under the RTI Act seeking further information and on verifying the same, it was found that the Bank has given a letter, dated 26-10-

2015, stating that it received Rs.15.00 lakhs on 04-03-2015 and Rs.6.50 lakhs on 17-03-2015 totalling to Rs.21.50 lakhs towards 25% of the auction amount and the balance amount of Rs.63.50 lakhs was received on 02-09-2015 and that due to pendency of W.P. No.7642 of 2015, filed by Sridhar Enterprises, which was subsequently dismissed, the balance amount was paid by the auction purchaser on 02-09-2015. The petitioners narrated the details of dates and the amounts paid in a table in paragraph No.7 of the affidavit in W.P. No.38600 of 2015.

vi) The petitioners also claimed that the Bank has never explained the reasons why the auction purchaser had deposited huge amount of Rs.15.00 lakhs on 04-03-2015, though, the earnest money deposit required to be made for both the properties was Rs.8.50 lakhs only and, thus, the unusual payment of Rs.15.00 lakhs made on 04.03.2015 gives rise to any amount of suspicion as to the way in which the Bank has conducted business while discharging statutory duties under the SARFAESI Act.

vii) According to the petitioners, no amount was paid on

13-03-2015, on which date auction has taken place. It is also stated that even the amount of Rs.15.00 lakhs was received by the Bank as legitimate payment for the purpose of auction, though auction purchaser was required to deposit Rs.6.50 lakhs on 13-03-2015, which did not occur thereby making the auction failure. Therefore, petitioners expressed suspicion that the auction purchaser regularly parks funds with the Bank making it convenient to use the same for various contingent purposes. The second violation, according to the petitioners, was payment of remaining 75% bid amount not being done by the auction purchaser within fifteen (15) days and the Bank taking shelter under certain alleged cases filed by them (petitioners), tries to justify its acts. It is according to them that except the interim order of this Court in W.P. No.7462 of 2015, filed by Sridhar Enterprises against auction of movable properties proposed on 23.03.2015, directing the Bank to go ahead with the auction of movable properties and not to confirm the sale, there is no other pending writ petition or order in force. According to them, the secured immovable assets were not subject matter in W.P. No.7462 of 2015 and they never challenged the auction notification, dated 06.02.2015, as such, deposit of balance of 75% bid amount on 02.09.2015 is illegal and, thus, the Bank has clearly violated the provisions of the SARFAESI Act.

viii) The petitioners also agitated that valuation of the secured assets was not properly done, and the very valuation made by the Bank demonstrates its *mala fides* as the adjacent land belonging to the brother of P. Sridhar was agreed to sell for Rs.12.00 lakhs per acre on 17-11-

2015 as per the auction notification, dated 06-10-2015, itself published in the Hindu News Paper, dated 07-10-2015. Thus, the petitioners attributed *mala fides* to the Bank in valuing the secured immovable assets at Rs.3.40 lakhs per acre. Hence, they sought to set aside the auction of secured immovable assets admeasuring Acs.15.00 and Acs.10.00 constituting subject matter in W.P. Nos.36625 of 2015 and 38600 of 2015, respectively.

7. So far as secured movable assets constituting subject matter in W.P. No.36652 of 2015 are concerned, while mentioning the very same averments, narrated in the above, further stated that the petitioner filed W.P. No.7462 of 2015 challenging the auction notice published in Hans India English News Paper, dated 12-03-2015, and the same was dismissed by this Court on 01-06-2015 holding that the Bank has right to proceed under the composite hypothecation agreement. In the said writ petition, this Court passed interim order through W.P.M.P. No.9906 of 2015, permitting the Bank to proceed further with auction, but, directed not to confirm the sale, and the said interim order was in force till disposal of the writ petition i.e.,

W.P. No.7462 on 01.06.2015. Aggrieved by the same, Sridhar Enterprises preferred W.A. No.718 of 2015 and the same was also dismissed on 20.08.2015. Thus, the sale certificate of movable property, dated 24-09-2015, is challenged in the instant writ petition i.e., W.P. No.36652 of 2015.

8. Bank has filed its counter on 10-12-2015 stating that pursuant to the auction conducted on 13-03-2015, successful bidder made payments in accordance with the rules of auction and allege that the petitioners are making attempts to invent some kind of alleged irregularities to challenge the auction.

i) Bank states that e-auction bids have been received through on-line only and all the relevant details have been furnished to the petitioners, and, therefore, there were no parking of funds by the auction purchaser or illegalities in conducting the e-auction. Bank has referred to filing W.P. No.7462 of 2015 by M/s. Sridhar Enterprises, which is petitioner in W.P. Nos.36652 and 36625 of 2015, and the consequent writ appeal, and in the process, amounts were paid by the auction purchaser including Rs.15.00 lakhs on 04-03-2015; since he became successful bidder in the auction held on 13-03-2015, he was asked to pay the balance amount of Rs.21.50 lakhs being 25% of the bid amount of Rs.85.00 lakhs and the amount of Rs.6.50 lakhs was paid on 17-03-2015, and subsequently balance bid amount of Rs.63.50 lakhs was paid on 02-09-2015, and since earnest money deposit was required to be paid on or before 12-03-2015 for two mortgaged properties, auction-

purchaser paid Rs.15.00 lakhs on
04-03-2015 and, thus, the auction purchaser has complied with the required amount of earnest money deposit and paid the balance amount of Rs.63.50 lakhs on 02-09-2015. Bank has specifically denied the allegation levelled by the petitioners that the auction purchaser regularly parks funds with it. Bank further denied that there is manipulation of amounts in regard to e-auction stating that the amounts were paid through RTGS method and, therefore, question of taking any undue advantage with it cannot arise.

ii) Bank also states that the sale notice issued by the IDBI Bank for sale of some lands which is pressed into service by the petitioners is irrelevant and valuation of the said properties at Rs.12.00 lakhs per acre is relatable to the land in Survey No.67, while the subject lands are situated in Survey No.100 and, therefore, the petitioners cannot claim any prejudice in conducting the e-auction and completing the formalities.

9. Additional counter affidavit was filed by the Bank on
26-12-2015 giving further details, as the counter affidavit earlier filed was bereft of certain details. In its additional counter affidavit, Bank states that as per the conditions of auction, Rs.8.50 lakhs, which is 10% of reserve price of Rs.85.00 lakhs, in respect of both the pieces of land was

to be paid before 12-03-2015, and the auction purchaser by way of RTGS sent the amount of Rs.15.00 lakhs. In the auction, he became successful bidder and he was asked to pay 25% of the bid amount being Rs.21.50 lakhs, and he paid the balance amount of Rs.6.50 lakhs on 17-03-2015.

i) Bank states that in the meantime, this Court was pleased to pass interim order staying confirmation of sale of movable properties, which are situated as fixtures on the land which was put to auction under the provisions of the SARFAESI Act, and on 01-06-2015, this Court dismissed W.P. No.7462 of 2015 and subsequently the petitioner preferred Writ Appeal No.718 of 2015 and the same was also dismissed on 20-08-2015. Bank states that confirmation of sale of land could not be made by the Bank in view of the fact that the movables fixed to the land have to be removed and possession has to be delivered to the successful bidder. The Bank and the auction purchaser were obliged to wait for culmination of proceedings in writ petition as well as the writ appeal, and on 04-08-2015, having obtained certified copy of the order in the writ petition, it has asked the auction purchaser to make payment of balance amount, and since he has requested time till 31-08-2015 and in the meantime writ appeal was preferred by the petitioners which was dismissed by this Court on 20-08-2015, auction purchaser made payment of balance amount in respect of both the pieces of land by 02-09-2015.

ii) Bank, therefore, contends that extension of time for payment of balance amount was necessitated because of the proceedings initiated by the petitioners and also in view of the fact that it was not in a position to confirm the sale and deliver the land without removing the movable properties, which were fixed to the land, and, therefore, claims that extension of time was allowed out of legal necessity (Bank has mentioned as 'illegal necessity') and there was no collusion between it (Bank) and the auction purchaser. Bank has filed certain documents mentioned in paragraph No.6 stating that they are required for proper adjudication of the issue relating to extension of time and, finally, sought to dismiss the writ petitions.

10. Heard Sri G.K. Deshpande, learned counsel for the petitioners, Sri K. Mallikarjuna Rao, learned Standing Counsel for respondent No.1 - Bank, and Sri Sharath Sanghi, learned counsel for respondent No.2 - auction purchaser.

11. Learned counsel for the petitioners would submit that the Bank has never informed as to what transpired subsequent to the date of auction so far as auction of immovable properties are concerned and,

therefore, the petitioners secured the information by making an application under the RTI Act and came to know that only the auction purchaser had participated in the auction and became successful bidder and though, the auction purchaser was supposed to deposit only 10% of bid price of Rs.8.5 lakhs of both the secured immovable assets, he has deposited Rs.15.00 lakhs exceeding 10% on 04-03-2015 itself and the balance of Rs.6.50 lakhs to make it 25% of bid amount though was required to be paid on 13-03-2015 itself, has not tendered the said amount and deposited the same only on 17-03-2015, thus, accounted for violation of mandatory provisions of Sub-Rule (3) of Rule 9 of Rules 2002 and thereby submits that the auction purchaser regularly parks funds with the bank making it convenient to use the same for various contingent purposes.

i) He would further submit that there was inordinate delay in making the balance payment of 75% of the bid amount though

Sub-Rule (4) of Rule 9 of Rules 2002 mandates that within fifteen (15) days from the date of confirmation of sale the auction purchaser has to deposit balance bid amount, still, as can be gathered from the correspondence between Bank and the auction purchaser, dated 04.08.2015 addressed by Bank to the auction purchaser and the reply given by him dated 11-08-2015 seeking time till 31-08-2015 and making payment only on 02-09-2015 would unmistakably establish that Bank as well as the auction purchaser flouted the mandatory requirement of Sub Rule (4) of Rule 9 of the Rules 2002 and, thus, collusion between Bank and the auction purchaser can be viewed as any amount of suspicion would arise in regard to completion of sale process and, therefore, sought to set aside the sale held on 13-03-2015 by declaring it as illegal.

ii) Learned counsel also would submit that Bank undervalued the secured immovable assets though adjacent immovable secured asset was valued at Rs.12.00 lakhs per acre when they were scheduled to be sold in the auction on 17-11-2015 pursuant to the auction notification dated 06-10-2015, but the Bank fixed the value in the instant auction at Rs.3.40 lakhs, and, thus, attributed *mala fides* to Bank and auction purchaser.

iii) Learned counsel for the petitioners, to substantiate the stand taken by them, placed reliance on the decisions of the Hon'ble Supreme Court in **General Manager, Sri Siddeshwara Cooperative Bank Limited and another v. Ikbal and others**[1]**, Commissioner of Endowments and others v. Vittal Rao and others**[2] and **Mathew Varghese v. Amritha Kumari**[3].

12. Learned Standing Counsel for the Bank while

submitting that the Bank has not committed any illegality or irregularity and that payment of 25% of the bid amount and the remaining 75% of bid amount were made in accordance with the provisions of the SARFAESI Act and the rules made thereunder, and that the delay was only due to the act of the petitioners in filing W.P. No.7462 of 2015 and obtaining interim order therein and after dismissal of the same, preferring W.A. No.718 of 2015, and, only after dismissal of the writ appeal, 75% of the bid amount was paid by the auction purchaser as the movable properties being fixtures in the extents sold in the auction, and contending that the writ petitions are not maintainable since there is efficacious alternative remedy available to the petitioners, placed reliance on the decisions of the Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon and others**[4], **Ikbal's Case** (Supra 1), and also the decisions of this Court in **Trinethra Infra Ventures Ltd. v. IFCI Ltd. and others**[5] and **Knovus Steels and Infrastructure Limited v. State Bank of India**[6].

i) For the proposition that once sale is confirmed, the same cannot be reopened, learned standing counsel placed reliance on the decisions of the Hon'ble Supreme Court in **Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and**

others[7]; and **Sadashiv Prasad Singh v. Harendar Singh and others**[8].

ii) Learned standing counsel also placed reliance on the decision of the Hon'ble Supreme Court in **Rosali V. v. Taico Bank and others**[9] as to the meaning of word "immediately" conveying "within reasonable time".

13. Learned counsel for the auction purchaser has not advanced any specific submissions.

W.P. No.36652 of 2015:

14. We intend to take up W.P. No.36652 of 2015 separately for the reason that the subject matter relates to movables and also as the petitioner has previously filed W.P. No.7462 of 2015 seeking identical relief and since he was unsuccessful in getting the action of the Bank in issuing the e-auction notice, dated 10-03-2015, published in Hans India News Paper, dated 12-03-2015, proposing to auction the movables set aside, and even the petitioner being unsuccessful in W.A. No.718 of 2015, as this Bench declined to grant relief and dismissed the writ appeal by pronouncing the judgment therein on 20.08.2015. Further, we intend to refer to the relief prayed in

W.P. No.7462 of 2015, which reads thus:

"Petition under Article 226 of the

> Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction more particularly one a writ in the nature of Mandamus, declaring the action of the respondent No.1 bank in issuing Auction Notice Dt.10-03-2015 published in Hans India News Paper Dt.12-03-2015 proposing to auction the Movable Properties of the petitioner i.e., {(i) Wheel Loader (ii) Intermediate Bin (iii) Secondary Crusher-1 (iv) Secondary Crusher-2 (v) Conveyer-2 (vi) Return Conveyor-2 (vii) Finished product Storage Bin (viii) Vibrating Screen and (ix) Diesel Generator) on 23-03-2015, as unconstitutional, illegal, arbitrary, unjust, against the guidelines issued by Respondent NO.2/RBI and violative of principles of Natural Justice."

i) At the cost of repetition, we intend to extract the relief sought for by the petitioner in the instant writ petition (W.P. No.36652 of 2015), which is thus:

> "For the reasons stated in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue writ in the nature of Mandamus, declaring the Auction Dt.10-03-2015 conducted by the respondent No.1 bank and the consequential issuance of Certificate of Sale of Moveables Property Dt.24-09-2015 in favour of Respondent No.2 in respect of the Movable Properties of the petitioner i.e.,
> {(i) Wheel Loader (ii) Intermediate Bin (iii) Secondary Crusher-1, Ten Tire Tipper (iv)

> Secondary Crusher-2, Ten Tire Tipper (v) Conveyer-2 (vi) Return Conveyor-2 (vii) Finished Product Storage Bin (viii) Vibrating Screen and (ix) Diesel Generator} as unconstitutional, illegal, arbitrary, unjust and violative of principles of Natural Justice and set aside the same and pass such other order or orders as this Honourable Court deems fit and necessary in the justice and equity."

ii) A learned single Judge of this Court dismissed the Writ Petition No.7462 of 2015, holding thus:

> "Apart from the maintainability of writ petition in respect of a simple dispute under a loan/composite hypothecation agreements, the writ petition deserves to be dismissed, for the very premise of filing the writ is that the movables sought to be auctioned on 23.03.2015 are not included in the hypothecation agreement except hydraulic excavators-2, rock breaker, poclainers. The petitioner should have disclosed the correct details of schedule under the composite hypothecation agreement for vindication of right under Article 226 of Constitution of India. As already noticed, the machinery is covered under agreement of hypothecation and the petitioner having not filed any rejoinder to the reply and documents placed on record by 1st respondent cannot be heard to complain that the impugned auction is unauthorized and unconstitutional. In my considered view, the decisions relied on by the petitioner are distinguishable on the fact situation of this case, and as tried to be persuaded by petitioner, this Court is not

> prepared to exercise the jurisdiction under Article 226 of Constitution of India."

iii) This Division Bench dismissed W.A. No.718 of 2015 as devoid of merit, holding thus:

> "….. We have also perused the judgments relied on by the learned counsel for petitioner, but, as the steps taken by the respondents are in terms of the hypothecation agreement, the petitioner is not entitled to claim bar under Order 2 Rule 2 of C.P.C., and further, having regard to the facts of the case on hand, the judgment of the Delhi High Court in **Syndicate Bank'**s case (2 supra) also would not render any assistance to the case of petitioner. In view of the findings recorded by the learned Single Judge, we are of the view that the action taken by the respondents is in terms of the hypothecation agreement. Further, it is brought to our notice that auction was already conducted and confirmation was stayed in view of the interim order passed by the learned single Judge, but after disposal of the writ petition, even the sale is confirmed in favour of the 3rd party-purchaser and the 1st respondent-bank has recovered the full sale price."

iv) Though, learned counsel for the petitioners made an attempt to impress upon us that the relief sought for in the instant writ petition is for setting aside the sale certificate issued by the Bank to the auction purchaser and, thus, the relief is distinguishable from the relief prayed in W.P. No.7462 of 2015, we are not convinced with the same for the reason that the sale certificate issued by the Bank in favour of the auction purchaser relates to the very same auction, which was challenged in W.P. No.7462 of 2015. Therefore, in our considered view, if the instant writ petition is entertained and any order is passed, it would amount to reviewing the judgment passed by this Division Bench in W.A. No.718 of 2015. Therefore, we find no merit at all in the instant writ petition (W.P. No.36652 of 2015) and, accordingly, the instant writ petition is dismissed.

W.P. Nos.36625 & 38600 of 2015:

15. Turning to the reliefs claimed in W.P. Nos.36625 and 38600 of 2015, as already referred to in the above, they relate to auction of secured immovable assets. We have gone through the relevant averments made by the petitioners, Bank and the auction purchaser.

i) We would like to narrate the sequence of events in order to appreciate the contentions raised by the respective parties.
e-auction notice for sale of secured immovable assets was issued by the Bank on 06-02-2015 proposing to conduct auction on 13-03-2015. Auction purchaser has deposited Rs.15.00 lakhs on 04-03-2015. Auction was

conducted on 13-03-2015. Balance amount towards 25% of bid amount of Rs.6.50 lakhs was tendered by the auction purchaser on 17-03-2015. Remaining 75% of bid amount i.e. Rs.63.50 lakhs was tendered by the auction purchaser on 02-09-2015.

ii) Sub-Rule (3) of Rule 9 provides that the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again. In the instant case, the auction purchaser, who was the sole bidder participated in the auction on 13-03-2015, has not tendered the balance amount having deposited Rs.15.00 lakhs on 04-03-2015 towards earnest money deposit. In fact, earnest money deposit required to be deposited for both the properties was Rs.8.50 lakhs, but the auction purchaser deposited more than 10% required to be deposited. The petitioners intended to attribute *mala fides* to the Bank as well as auction purchaser. Even, over looking such allegation, when looked at the delay in depositing balance amount of
Rs.6.50 lakhs, certainly, it amounts to infraction of mandatory requirement of Sub-Rule (3) of Rule 9. When the auction was held on 13-03-2015, auction purchaser was required to deposit Rs.6.50 lakhs to make it 25% on 13-03-2015 itself. As seen from the e-auction sale notice,

auction was scheduled to be held on 13-03-2015 between 11.00 a.m. and 3.00 p.m. As canvassed by the Bank, when the deposits were made by the auction purchaser through on-line, the question of failure to deposit Rs.6.50 lakhs on 13-03-2015, in all probability, ought not have taken place. When formalities were completed by 3.00 p.m. or 3.30 p.m., even giving half-an-hour time, the auction purchaser ought to have deposited Rs.6.50 lakhs on the same day, but he deposited the said amount only on 17-03-2015, for which there is absolutely no explanation at all by the Bank in its counter or in its additional counter.

iii) Learned standing counsel for the Bank argued that the word "immediately" occurring in Sub-Rule (3) of Rule 9 has to be construed as "within reasonable time" and when viewed in that context making payment of Rs.6.50 lakhs on 17-03-2015 cannot be construed as infraction of Sub-Rule (3) of Rule 9. In the said context, he has placed reliance on the decision of the Hon'ble Supreme Court in **Rosali's Case** (Supra 9), wherein the Hon'ble Supreme Court held in paragraph Nos.31 and 32 explaining the meaning, thus:

> "31. The term "immediately", therefore, must be construed having regard to the aforementioned principles. The term has two meanings. One, indicating the relation of cause and effect and the other, the absence of time between two events. In the former sense, it means proximately,

> without intervention of anything, as opposed to "mediately". In the latter sense, it means instantaneously. The term "immediately", is, thus, required to be construed as meaning with all reasonable speed, considering the circumstances of the case. (See *Halsbury's Laws of England,* 4th Edn., Vol.23, Para 1618, p.1178.)
>
> 32. In a given situation, the term "immediately" may mean "within reasonable time". Where an act is to be done within reasonable time, it must be done immediately. {See *Gangavishan Heeralal v. Gopal Digambar jain [*AIR 1980 MP 119: 1980 MPLJ 246]. AIR at p.123, *Keshava S. jamkhandi v. Ramachandra S. Jamkhandi* [AIR 1981 Kant 97: (1980) 2 Kant I J 432 (FB)], AIR at p.101, *Ramnarayan Triyoginarayan Trivedi v. State of M.P.*[AIR 1962 MP 93 (FB)]. AIR at p.98, *R. v. HM Inspector of Taxes, ex p Clarke* [(1971) 2 QB 640: (1971) 3 WLR 425: (1971) 3 All ER 394]. All ER at p.398 and *R. v. HM Inspector of Taxes, ex p Clarke* [(1973) 3 WLR 673: (1972) 1 All ER 545 (CA), All ER at p.555.}."

The fact-situation in the above decision would reveal that the sale was conducted by the executing Court at about 4.00 p.m. on 26-10-1988 and keeping in view, the fact that the banks at that time were closed, directed the auction purchaser to deposit the amount by the next day, and the auction purchaser obliged the direction of the executing Court and deposited the amount on 27-10-1988 and the

balance amount on
11-11-1988. Certainly, the said fact-situation is not akin to the one occurring in the instant case. In the instant case, though, auction had taken place on 13-03-2015, auction purchaser has not deposited the balance amount to make it 25% either on 13-03-2015, or at least, on 14-03-2015, but three (03) days after the date of auction, he has deposited Rs.6.50 lakhs, and, therefore, it has to be held that there has been complete contravention of the mandatory requirement of
Sub-Rule (3) of Rule 9. Certainly, the said violation cannot be sidelined.

16. The next violation is failure to deposit balance payment of 75% of the bid amount within fifteen (15) days from the date of auction by the auction purchaser. The balance bid amount was deposited on 02-09-2015 by the auction purchaser. Sub-Rule (4) of Rule 9 mandates that balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties. Even, consequence of committing default is provided by the provisions of Sub-Rule (5) of Rule 9.

17. It is, now, to be seen whether the reason assigned by the Bank referred to in the above can be

viewed as plausible reason or whether the delay in payment of balance 75% of the bid amount amounts to infraction of Sub-Rule (4) of Rule 9 of Rules 2002?

18. Though, we have referred to the reasons assigned by the Bank while narrating the additional counter affidavit filed by the Bank, we would like to once again state that (a) the Bank is attempting to take shelter under the interim order passed in W.P. No.7462 of 2015, which was dismissed on 01-06-2015, and also the factum of preferring W.A. No.718 of 2015 by the petitioners which was also dismissed on 20-08-2015, and stating that only on obtaining certified copy of the order of dismissal of the writ appeal on 04.08.2015, it has informed the auction purchaser to deposit the balance bid price; (b) further reason assigned by the Bank is that the movables sought to be auctioned were, in fact, fixtures attached to the lands, which are secured assets in the form of immovable properties sought to be sold in the auction held on 13-03-2015, and therefore, the Bank has waited till disposal of writ appeal on 04-08-2015 for demanding the auction purchaser to deposit the balance 75% of bid price which was deposited on 02-09-2015.

19. The reasons assigned by the Bank are absolutely unconvincing, since, though, the movables were attached to the lands sought to be sold in the

auction held on 13-03-2015 and the sale was effected, nothing prevented it to receive the balance 75% of the bid price within fifteen (15) days after confirmation of sale. Thus, we are of the strong view, that there has been contravention of the mandatory requirement provided by the provisions of Sub-Rule (4) of Rule 9 of Rules 2002.

20. Further, even a perusal of the letter addressed by the Bank to the auction purchaser on 04-08-2015 shows that the Bank has congratulated the auction purchaser and requested him to pay the remaining balance amount of Rs.63.50 lakhs immediately to avoid forfeiture of the amount paid and further mentioning that on receiving full amount, it will issue sale certificate. The auction purchaser given a reply to the Bank on 11-08-2015 stating that he was inclined to pay total balance amount before the end of that month i.e., 31-08-2015 and requested to cooperate and oblige. But, the auction purchaser has paid the balance amount of Rs.63.50 lakhs on 02-09-2015. The Bank in its additional counter, conveniently mentioned that the auction purchaser has sought time till 31-08-2015 basing on the reply given by him, but the said correspondence would not satisfy the requirement of
Sub-Rule (4) of Rule 9 and, therefore, absolutely, there is no reason leaving apart plausible reason in getting over the time limit prescribed by Sub-Rule (4) of Rule 9 of

Rules 2002. In the said context,

learned counsel for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in **Mathew Varghese's Case** (Supra 3) referring to paragraph Nos.39 and 40, thus:

> "39. In *Ram kishun* (supra), paras.13, 14 and 28 are relevant forour purpose, which are as under:
>
> " 13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. *But it does not mean that the Financial Institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers* and be permitted further to dispose off the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.
>
> 14. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of a statute. (Vide *Lachhman Dass v. Jagat Ram* and *State of M.P. v. Narmada bachao Andolan).* Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance with the statutory provisions.
>
> 28. In view of the above, the law can be summarized to the effect that the recovery of the public dues must be made strictly in accordance with the procedure prescribed by law. The liability of a surety is co-extensive with that of the principal debtor. In case there are more than one surety the liability is to be divided equally among the sureties for unpaid amount of loan. Once

the sale has been confirmed it cannot be set aside unless a fundamental procedural error has occurred or sale certificate had been obtained by misrepresentation or fraud.'

40. The above principles laid down by this Court also makes it clear that though the recovery of public dues should be made expeditiously, it shold be in accordance with the procedure prescribed bylaw and that it should not frustrate a Constitutional Right, as well as the Human Right of a person to hold a property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside."

Thus, the Hon'ble Supreme Court emphasised that recovery of public dues should be made in accordance with the procedure prescribed by law and in the event of a fundamental procedural error occurring in a sale, the same can be set aside. The fact-situation herein squarely covers the principle laid down by the Hon'ble Supreme Court and, therefore, the auction held on 13-03-2015 is liable to be set aside.

21. Turning to the submission that the instant writ petition cannot be maintained, learned standing counsel for the Bank has placed reliance on the decisions of the Hon'ble Supreme Court in **Satyawati Tondon's Case** (Supra 4)**, Ikbal's Case** (Supra 1), and also the decisions of this Court in **Trinethra Infra Ventures Ltd's Case** (Supra 5) and **Knovus Steels and Infrastructure Limited's Case** (Supra 6) to fortify his stand that the

petitioners ought to have approached the Debts Recovery Tribunal as an efficacious alternative remedy is available to them under Section 17 of the SARFAESI Act, and, therefore, the instant writ petitions are not maintainable.

22. Learned counsel for the petitioners, on the other hand, relied on the decision in **Ikbal's Case** (Supra 1) for the proposition that availability of efficacious alternative remedy is not an absolute bar to exercise extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, and in the context of right of the borrower in entering into written agreement as in Rule 9 (4) of Rules 2002 and explaining the meaning of expression "written agreement between the parties", learned counsel, while contending that the Hon'ble Supreme Court explained the word "parties" occurring in the said expression, held that it includes secured debtor, borrower and auction purchaser, placed reliance on the observations of the Hon'ble Supreme Court contained in paragraph No.14, thus:

> "14. A reading of sub-rule (1) of Rule 9 makes it manifest that the provision is mandatory. The plain language of Rule 9(1) suggests this. Similarly, Rule 9(3) which provides that the purchaser shall pay a deposit of 25% of the amount of the sale price on the sale of immovable property also indicates that the said provision is mandatory in nature. As regards balance amount of purchase price, sub-rule (4)

> provides that the said amount shall be paid by the purchaser on or before the fifteenth day of confirmation of sale of immovable property or such extended period as may be agreed upon in writing between the parties. The period of fifteen days in Rule 9(4) is not that sacrosanct and it is extendable if there is a written agreement between the parties for such extension. What is the meaning of the expression "written agreement between the parties" in Rule 9(4)? The 2002 Rules do not prescribe any particular form for such agreement except that it must be in writing. The use of the term "written agreement" means a mutual understanding or an arrangement about relative rights and duties by the parties. For the purpose of Rule 9(4), the expression "written agreement" means nothing more than a manifestation of mutual assent in writing. The word "parties" for the purpose of Rule 9(4) we think must mean the secured creditor, borrower and auction-purchaser.

In fact, learned counsel for the petitioners placed reliance on the decision in **Ikbal's Case** (Supra 1) to answer the contention of the learned standing counsel for the Bank that the correspondence between the Bank and the auction purchaser, referred to in the above, through the letters, dated 04-08-2015 and 11-08-2015, accounts for a sort of mutual understanding satisfying the expression "written agreement' occurring in Rule 9(4) of Rules 2002.

23. To substantiate the stand that once sale is confirmed, it cannot be reopened, the learned standing

counsel for the Bank relied on the decisions of the Hon'ble Supreme Court in **Valji Khimji's Case (**Supra 7**) and Sadashiv Prasad Singh's Case** (Supra 8).

But the fact-situation therein is different from the one occurring herein and would not render any assistance to justify violation of mandatory requirements of Rules 9(3) and 9 (4) of the Rules 2002.

24. We, therefore, hold that the auction conducted on 13.03.2015 by the Bank in favour of the auction purchaser - respondent No.2 is liable to be set aside on account of contravention of mandatory provisions of Rules 9(3) and (4) of Rules 2002, and, therefore, the same is set aside. However, we direct the Bank - respondent No.1 to return the bid amount of Rs.85,00,000/- (Rupees eighty five lakhs only), without any interest thereon, to the auction purchaser - respondent No.2; granting liberty to take measures in accordance with law.

25. In the result, W.P. No.36652 of 2015 is dismissed; and W.P. Nos.36625 and 38600 of 2015 are allowed, as indicated above. There shall be no order as to costs.

26. As a sequel thereto, miscellaneous petitions, if any pending in these writ petitions, stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

February 10, 2016.

Mgr

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[1]. (2013) 10 SCC 83

[2]. (2005) 4 SCC 120

[3]. [2014 (2) D.R.T.C. 27 (S.C.)]

[4]. (2010) 8 SCC 110

[5]. 2015 (1) ALD 202

[6]. 2015 SCC Online Hyd. 273

[7]. (2008) 9 SCC 299

[8]. (2015) 5 SCC 574

[9]. (2009) 17 SCC 690