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

WRIT PETITION No. 11891 OF 2016

O R D E R : ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

The petitioner in this Writ Petition challenges the auction sale notice taken out by the 1st respondent bank on 08.03.2016, proposing to liquidate the three items of the secured assets for realizing the outstanding liabilities from him.

The petitioner has availed financial assistance from the 1st respondent bank to the tune of Rs.1.75 crores in the year 2004. He has created mortgage over five different immovable properties as a security for the loan transaction. However, default was committed in recycling the debt. As a consequence, the loan account has been declared as a *'non-performing asset'* and the 1st respondent bank has initiated measures for securitization, as provided for under sub-section (2) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), by issuing a demand notice on 27.03.2010, requiring the petitioner to liquidate the entire liability of Rs.2,08,18,961/- standing as on 27.03.2010. Since the demand notice has not been honoured by the petitioner, the follow-up action under sub-section (4) of Section 13 of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 has been taken. We have not found any infirmity, either legal or otherwise, in the action of the 1st respondent bank in this regard. The impugned sale notice has proposed to liquidate three of the immovable properties, which are forming part of the *'security interest'* created by the petitioner in favour of the 1st respondent bank, as defined in Section 2(1)(zf), which reads as under:

> "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31"

The first of those three properties is an open plot of approximately 3000 square yards of land lying in Block No. 6, Ward No. 36, Survey No. 15/2 of Warangal Municipal Corporation. The reserve price for this property has been fixed as Rs.2.90 crores. The second property is a site in an extent of 2420 square yards with a building standing thereon bearing D.No. 7-14, Gorrekunta Village, Hanamkonda Mandal, Warangal District. The upset price for this property has been fixed at Rs.33.50 lacs. The third of the properties is a site of 200 square yards having a two-storied building bearing D.No.14-1-103, Venurao Colony, Warangal City. The upset price is fixed at Rs.25.30 lacs for this property. All the three properties are sought to be sold by inviting tenders, which would be opened at 02.30 in the After Noon on 13.04.2016.

It is contended by Sri D. Raghavulu, learned counsel for the petitioner before us that in case by undertaking the sale of items 1 and 2, the entire liability of the petitioner gets liquidated, the bank has no right to proceed against the third item and then, confirm its sale or in the alternative, in case there are no bidders for items 1 and 2 of the secured assets put to sale now and if there is response only for the third property, namely the residential house bearing D.No.14-1-103, Venurao Colony, Warangal City, the petitioner seeks to protect the same.

Sub-section (8) of Section 13 of the SARFAESI Act empowers any borrower to retrieve the secured asset by depositing all the dues together with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer of the secured asset. In the event of any such payment being tendered by the borrower, the sale, even if has been conducted, but the title of which has not yet been transferred by the secured creditor in favour of the best bidder/highest bidder, then the secured creditor shall take no further steps to transfer or sell the secured asset. This is the salutary principle incorporated in the statute, based upon the legal principle that 'the mortgagor has a right to redeem the mortgaged debt at any time before it is sold and title thereto is transferred in accordance with law'. The legal principle in this regard has been clearly spelt out by the Supreme Court in ***Mathuralal v. Keshar Bai and another***[1]***,*** in paragraphs 15 & 16, which is to the following effect:

> "15. ……………….So long as the mortgagor had a right to redeem the mortgage he can always pay off the mortgagee and get back possession. This position would continue so long as the property is not sold under a final decree for sale under the provisions of Order 34 C.P.C.
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> 16. In our opinion the second contention put forward on behalf of the appellant has no force. The rights of a mortgagee do not merge in his rights under the preliminary decree for sale. As already mentioned, the mortgagee lost his right to recover the money by sale of the mortgaged property; otherwise his security remained intact and the mortgagor continued to have his right to redeem the property."

In fact, this right has also taken the firm shape in the form of Section 60 of the Transfer of Property Act, recognizing the right of redemption in the hands of the mortgagor.

Hence, by undertaking sale of items 1 and 2 of the listed properties in the sale notice dated 08.03.2016, if the entire outstanding liability of the petitioner together with the incidental expenses incurred by the 1st respondent bank for undertaking securitization measures can be liquidated, in such an event, the 1st respondent bank may not confirm the sale of the 3rd item, a residential house property. Only in the event the bids secured for items 1 and 2 would remain insufficient for liquidating the entire liability, together with the incidental expenses or no bids being offered for items 1 and 2, or anyone of them, the third property may be sold in favour of the best bidder. However, before the actual date of transfer of title in favour of the best bidder, if the petitioner were to pay the same amount as the best bidder has offered together with necessary incidental expenses including any amount, which might have been agreed to be refunded as interest on such monies deposited by the best bidder, which may not exceed 9% per annum, the right of the petitioner to redeem the third property from the mortgage would get recognized and the property No.3 gets redeemed. In case the petitioner commits any default, the 1st respondent bank is entitled to proceed further without any further reference to this Court by transferring right in favour of the best bidder(s).

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

11th April 2016

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[1] AIR 1971 SUPREME COURT 310