THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>WRIT PETITION NO.3129 OF 2015</u>

DATED:08-08-2016

Between:

C.V.R. Gopal Reddy
and another … Petitioners

And

State Bank of India
Rep. by its authorized officer
Yerramukka Palli Branch
Kadapa District
and others … Respondents

COUNSEL FOR THE PETITIONERS: Mr. G. Kalyan Chakravarthy

COUNSEL FOR RESPONDENT NO.1: -
COUNSEL FOR RESPONDENT NOs.2 to 4: -
COUNSEL FOR RESPONDENT NO.5: -
COUNSEL FOR RESPONDENT NO.6: Mr. B. Narayana Reddy,
Assistant Solicitor General

THE COURT MADE THE FOLLOWING:
ORDER: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

The order dt.02.12.2014 in Appeal No.109 of 2014 of respondent No.5 – Debts Recovery Appellate Tribunal, is assailed in this writ petition.

Respondent No.2 is the principal borrower from respondent No.1. As it has failed to repay the loan amount, respondent No.1 has brought the properties for sale. The petitioners have participated in the auction which was confirmed in favour of the petitioners on 04.2.2008. After waiting for more than six months, respondent No.2 has filed an application for setting aside the sale with an application for condonation of delay before the Debts Recovery Tribunal, Kolkata. The said Tribunal has condoned the delay and set aside the sale by order dt.23.05.2014. Feeling aggrieved by the said order, the petitioners have filed Securitization Appeal No.109 of 2014 before respondent No.5 – Appellate Tribunal. This appeal also having been dismissed, the petitioners filed this writ petition.

We have heard Mr. G. Kalyan Chakravarthy, learned counsel for the petitioners, and perused the record. The Debts Recovery Tribunal has set aside the sale mainly on two grounds, namely, that the property was under-valued, which fact was admitted by respondent No.1 – Bank, and that respondent No.1 also failed to issue notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, as per the procedure prescribed under sub-rule (7) of Rule 8. The Tribunal has rendered a finding that on account of the afore-mentioned procedural irregularities, the interests of respondent No.2 were seriously affected. The Appellate Tribunal by assigning rational and cogent reasons has dismissed the appeal.

The only ground urged by the learned counsel for the petitioners is that the sale having been confirmed on 04.02.2008 respondent No.2 was not diligent in questioning the same within a reasonable time thereafter and that it has filed an application for setting aside the sale more than six months after confirmation of the sale. He has further submitted that in view of lack of diligence on the part of respondent No.2, the Debts Recovery Tribunal ought to have considered issue in favour of the petitioners on equities. We are afraid, we cannot accept this submission of the learned counsel for the petitioners. When the creditor bank itself has admitted the patent procedural illegalities, the validity of the sale cannot be upheld. The petitioners being beneficiaries of an illegal sale, no equities could be pleaded by them. On the aforementioned premises, we do not find any reason to interfere with the well-considered order of respondent No.5.

The writ petition is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.4168 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

08-08-2016

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