HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION Nos.2869 of 2016 & 36945 and 41919 of 2015

COMMON ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

W.P.No.2869 of 2016

The petitioner sought for declaration that the E-auction notice dated 22.01.2016 issued by the Authorised Officer of the Canara Bank, Nandhyala Branch, Kurnool District, for sale of the house property bearing D.No.13-6-432-24, Gudi Malkapur, Hyderabad without according confirmation of sale in favour of the petitioner, who emerged as highest bidder in the auction conducted for the same property on 31.12.2015 as illegal.

Heard Sri K.S.Murthy, learned counsel for the petitioner and Mrs. Siva Kumari, learned standing counsel for the respondent Nos.1 to 3 and also Sri Koti Reddy, learned counsel on behalf of the Principal borrower though he is not made a party here and also Nageshwar Rao Pujari.

It appears the principal borrower who has availed certain financial assistance from Canara Bank, Nandhyala Branch, Kurnool District, has committed default in repayment. Consequently, the loan account has been declared as 'non-performing asset' by the Bank. Even the demand notice served under Sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), has not produced the desired result and hence, the measures provided for Securitisation of the loan under Sub-Section (4) of Section 13 of the Act have been taken. The 3rd respondent – Authorised Officer of the Canara Bank has, by his notice of sale by e-auction method published on 17.10.2015, proposed to conduct the sale on 21.11.2015, but however, no bidders have come forward to participate in the auction. In the meantime, it appears the principal borrower has moved W.P.No.36945 of 2015 in which an interim direction was issued by this Court making the principal borrower to deposit certain amount of money within 2 weeks period to the loan account. The principal borrower has not paid the said amount. When this fact was brought to the notice of this Court on 07.12.2015, another order was passed in W.P.No.36945 of 2015 making it clear that if the petitioner (principal borrower) has not complied with the conditional order dated 13.11.2015, it is open to the respondents to take further steps in accordance with law without reference to pendency of the proceedings before this Court. Accordingly, the respondent/Bank has taken out a notification on 11.12.2015 proposing to conduct sale by e-auction method of the secured asset on 31.12.2015. In respect thereof, the petitioner in W.P.No.2869 of 2016 has participated therein in respect of property No.5 of the secured asset notified for sale and he has emerged as best bidder by offering Rs.94,50,000/- for the said asset. He has deposited the initial 10% amount, but however, he did not pay the balance 15% of the amount to make up the 25% of bid amount. In those set of circumstances, the Bank has sent up a communication to the petitioner in W.P.No.2869 of 2016 bringing to its notice that it has not paid the amount representing 25% of bid amount as per the terms of sale. Finding no response, the respondents have once again published notification on 22.01.2016 proposing to conduct sale by e-auction method on 29.02.2016. As soon as this notification has been published, proposing to put the said property to sale once again for which the petitioner has emerged as best bidder when the sale took place on 31.12.2015, the petitioner has instituted this writ petition No.2869 of 2016 with the prayer referred to supra.

Sri K.S.Murthy, learned counsel for the petitioner would contend that as per the terms subject to which sale by e-auction method was undertaken on 11.12.2015, it has been specified in condition 'O' of Para 8 that the highest bidder should deposit 25% of the bid amount as soon as the secured creditor confirms the bid, while the balance 75% has to be paid within 15 days from the date of payment of 25% of the amount. In the instant case, the Bank has never given any confirmation that bid offered by the petitioner in W.P.No.2869 of 2016 is confirmed. Hence, the petitioner has not deposited the balance 15% of his bid amount as he has already paid 10% as EMD. He was requesting the Bank to confirm his bid, which the Bank was not giving the confirmation asked for. Hence, it is contended that no fault be attributed to the petitioner in his default in not paying the 15% of bid amount when coupled with 10% EMD, which make 25% of the bid amount.

Smt. S.Shiva Kumari, learned counsel for the Bank would submit that the auctions were conducted on e-auction platform. When once a bidder is declared as the highest bidder in such e-auction mode, that itself will amount to a confirmation from the secured creditor and there is no necessity to issue any separate confirmation letter to the highest bidder. According to the learned counsel for the Bank, the petitioner herein having failed to deposit the balance 15% of his bid amount, the EMD paid by him is liable to be forfeited declaring him to have committed a breach of the terms subject to which the auction was conducted.

We have passed an order on 23.02.2016 while entertaining this case to test the *bonafides* of the petitioner and as to whether he is really anxious to live up to the promise which he made to take this e-auction sale held on 31.12.2015 to it's logical conclusion within a short time. As per our order dated 23.02.2016, Sri K.S.Murthy, learned counsel for the petitioner would confirm that the petitioner has paid the balance 15% to the Bank and that money is now lying with the Bank. Since we have not stopped the auctions to be held on 29.02.2016, the Bank went ahead and this time around only one bidder has participated and above the upset price of Rs.94,50,000/-, he has raised by Rs.10,000/- and stopped there. Consequently, the best bid today that emerged was Rs.94,60,000/-. Smt. Shiva Kumari would also submit that the bidder has deposited 25% of the amount this time around without any default and hence, the Bank should be granted liberty to confirm the sale in favour of the best bidder who emerged in the bids that took place on 29.02.2016. At that stage, Sri Koti Reddy, learned counsel for the principal borrower, the petitioner in W.P.No.36945 of 2015, would submit that he has no objection if the petitioner in W.P.No.2869 of 2016 matches the offer of Rs.94,60,000/-

and acquires interest over the said property. Sri K.S.Murthy submits that he would convey his client to pay up the balance amount to make good his offer at Rs.94,60,000/-.

However, we have noticed that the respondent/authorised officer of the Bank has notified the sale by e-auction mode on 07.12.2015 whereas the sale was sought to be conducted on 31.12.2015. Thus, the intervening time gap in between was found to be less than 30 days and consequently, the sale on 31.12.2015 could not have been conducted by the respondent/Bank in the teeth of language employed in sub Rule 1 of Rule 9 of the Security Interest (Enforcement Rules) 2002. However, Sri Koti Reddy, learned counsel for the principal borrower has conveyed that the principal borrower is not at all interested in making any objections to the sale and he prefers to waive the default committed by the respondent/Bank, inasmuch as if the money as offered by the bidders is deposited in quick time, the liability of the borrower will come down considerably and hence, would help to stop the interest from mounting any further to that extent to the loan account. Sri K.S.Murthy, learned counsel for the petitioner would also convey the consent of the writ petitioner by name Nadakatla Rajasekhar Reddy, that he is also not interest in challenging the sale by e-auction mode conducted on 31.12.2015, notwithstanding the fact that from the date of publication of sale notification on 07.12.2015, there was no 30 days time gap. In view of waiver of their rights from the principal borrower and the proposed auction purchaser, we consider that the principle enunciated by the Supreme Court in **Sri Siddeshwara Cooperative Bank Limited Vs. Ikbal**, wherein it was held that the mandatory provision of 30 days notice can be waived by the borrower and in such eventuality, the sale cannot be voided, gets attracted.

In view of the consent expressed by the petitioner in W.P.No.2869 of 2016 to match his offer now made by the bidder who participated in the auction on 29.02.2016, we consider that the ends of justice would be better served by permitting this petitioner in W.P.No.2869 of 2016 to pay up the differential amount treating his offer as Rs.94,60,000/-. The differential amount shall be paid within 15 days commencing from tomorrow to the respondent/Bank. Upon such payment, the respondent/Bank will execute sale certificate and register it and would also deliver the vacant possession of the property purchased by the writ petitioner. In case, the petitioner fails to pay the balance amount within the stipulated period, the respondent/Bank is at liberty to confirm the sale in favour of the bidder who participated and gave offer for Rs.94,60,000/- at the auction that was held on 29.02.2016 without any further reference to this Court. In such an event, the respondent/Bank would also be justified in forfeiting the 10% EMD by the petitioner in W.P.No.2869 of 2016, but however, it would refund the 15% amount paid by the petitioner pursuant to the interlocutory order passed by us in W.P.No.2869 of 2016.

With this observation, this writ petition is disposed of.

W.P.No.36945 of 2015

There is no denial of the fact that the petitioner in this writ petition has availed financial assistance from the respondent/Bank and committed default in repayment. Further, the loan account has been declared as Non Performing Asset. Since the notice served by the respondent/Bank under Sub Section 2 of Section 13 of the Act has not produced the desired result, measures of securitization as provided for under sub Section 4 of Section 13 of the Act have been initiated by the respondent/Bank. Though this Court has extended a kind of equity in favour of the petitioner in this case, the petitioner could not avail the same.

Therefore, we do not find any merit in this writ petition and accordingly, it is dismissed for the sheer failure of the petitioner to liquidate the liability towards the loan account. However, the sale proceeds realised by way of sale shall be promptly noted in the books of account of the loan account of the borrower.

W.P.No.41919 of 2015

This writ petition has been instituted by the guarantor of the loan availed by the principal borrower. As per the definition of the expression 'borrower' contained in Section 2 (1)(f) of the Act, even a guarantor answers the definition of a borrower. Therefore, the liability incurred is co-extensive. It shall be open to the respondent/Bank to proceed against the principal borrower as well as the guarantors jointly or severally and then realize the outstanding debt due from them.

Therefore, we do not find any merit in this writ petition as the default committed by the principal borrower in liquidating the liability amounts to 'default' as defined under Section 2(1)(j) of the Act and the security interest over which such interest has been created by the principal borrower/guarantor can be proceeded against for securitization of the loan account under Section 13 read with Section 14 of the Act.

Accordingly, this writ petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

16.03.2016
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