

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
WRIT PETITION No. 9714 OF 2016

% Dated 31.03.2016

M/s Bala Murali Traders
Rep. by its Prop. K.M. Raja Sekhar

.... Petitioner

Vs.

\$ State Bank of Hyderabad,
Rep. by its Authorized Officer & another.

....Respondents

! Counsel for the Petitioner : Sri K.B. Ramanna Dora
on behalf of Sri D. Raghavulu

^ Counsel for the 1st respondent : Sri A. Krishnam Raju

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? Cases referred
AIR 1971 Supreme Court 310

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No. 9714 OF 2016

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Rep. by its Prop. K.M. Raja Sekhar

.... Petitioner

Vs.

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JUDGMENT PRONOUNCED ON : 31.03.2016

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? yes
 3. Whether Their Lordship wish to see the
fair copy of the Judgment? No

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
WRIT PETITION No. 9714 OF 2016**

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

Heard Sri K.B. Ramanna Dora, learned counsel on behalf of learned counsel for the petitioner and Sri A. Krishnam Raju, learned Standing Counsel on behalf of the 1st respondent State Bank of Hyderabad.

In view of the order proposed to be passed by us now, we may not be required to advert to all the facts, in great detail.

When the respondent bank, which has extended certain financial assistance to the petitioner, has declared the loan account as a 'non-performing asset' and then, raised demand notice under sub-section (2) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, demanding the petitioner to liquidate the outstanding liability of Rs.2,42,39,768/- as on 01.07.2015, the petitioner did not honour the said notice and ignored it in effect. Hence, the follow-up action under sub-section (4) of Section 13 of the Act has been initiated by putting the property to sale on 02.12.2015. At that stage, the petitioner filed Writ Petition No. 40020 of 2015. Entertaining the said Writ Petition, on 04.01.2016, a Division Bench of this Court directed stay of auction

pursuant to the e-auction notice dated 02.12.2015, on condition of the petitioner depositing an amount of Rs. 100 lacs, out of which Rs. 50 lacs was ordered to be paid on or before 11.00 A.M. on 11.01.2016 and the balance amount of Rs.50 lacs to be paid within a further period of four weeks thereafter. It was made clear by this Court that in the event of default in paying any of the amounts referred to above, it is open to the respondent bank to take further steps without reference to the pendency of the proceedings before this Court. The writ petitioner could pool up only Rs. 50 lacs and paid the same on 11.01.2016. Thereafter, the bank has not conducted the sale, but before the four weeks' period thereafter expired, say by 11.02.2016, the petitioner has not paid the balance amount of Rs. 50 lacs, as ordered by this Court on 04.01.2016, and in view of the liberty granted by this Court, the 1st respondent bank has once again taken out e-auction sale notice on 20.02.2016, putting all the three secured assets to sale by e-auction mode. The auction was sought to be conducted on 24.03.2016 between 04.00 and 05.00 P.M. The reserve price for the 1st property was set at Rs.356.95 lacs, while the reserve price for the 2nd property was set at Rs.24.25 lacs and for the 3rd property, the reserve price was fixed at Rs.20.30 lacs. Though the auction was held, no bids have been received with regard to the 1st property. Insofar as properties 2 and 3 are concerned, they fetched the highest bids standing at Rs.26.15 lacs and Rs.23.90 lacs respectively. Finding the response with regard to properties 2 and 3 as fairly reasonable and good, the Authorized Officer of the 1st respondent bank has accepted the initial deposit of 25% from the best bidders and the balance 75% of the bid amount is yet to be received, because there is still time available for the auction purchasers to deposit the same. At this stage, this present Writ Petition is filed.

Sri Ramanna Dora would submit that the petitioner is anxious to

protect the two properties, which have now been put to sale and to save the said properties, he wants to pay the same amount which has fetched in the auctions, namely Rs.26.15 lacs and Rs.23.90 lacs.

Insofar as the 1st property is concerned, Sri Ramanna Dora would also submit that the petitioner will pay up the balance Rs.50 lacs as per the order passed by this Court on 04.01.2016 in Writ Petition No. 40020 of 2015.

Though Sri A. Krishnam Raju, learned Standing Counsel appearing for the 1st respondent bank wants time to secure detailed instructions in the matter and file a counter-affidavit, but however, on the legal principle that a borrower's right to redeem the property cannot be extinguished till the title to the mortgaged property is transferred in favour of the purchaser, he would agree, in principle, that no exception can be drawn to the legal principle. In fact, we are fortified in our opinion that the mortgager's right to redeem the property subsists till such time the right, title and interest in the mortgaged property gets extinguished by undertaking a sale in accordance with law and the appropriate title deed in the form of a conveyance is executed in favour of the purchaser.

In **Shaw vs. Foster [(1872) 5 H.L.321 at 340]** Lord Cairns has noted as under:

“ It is a well-established rule of equity that a deposit of documents of title without anything more, without writing, without word of mouth, will create in equity a charge upon the property referred to”.

Thus, any equitable mortgage may be created by the debtor by depositing his title deeds with the creditor with intent to create security thereon, for the debt obtained. In **Birch vs. Ellames & Gorst [145 ER 1924]**, dealing with the effect of such an equitable mortgage, it has been noted as under:

“ The deposit of title deeds as a security for a debt is

now settled to be evidence of an agreement to make a mortgage and that agreement is to be carried into execution by the Court against the mortgagor or any who claim under him, with notice, either actual or constructive of such deposit having been made.”

Lord Bramwell in ***Salt vs. Marquess of Northampton [(1892)***

A.C.1] has observed to this effect:

“ An equity of redemption is a right not given by the terms of the agreement between the parties to it, but contrary to them, to have back securities given by a borrower to a lender on payment a principal and interest at a day after that appointed for payment, when by the terms of the agreement between the parties the securities were to be the absolute property of the creditor. This is now a legal right of the debtor.....”

Thus, the mortgagor’s right to redeem the mortgage even after the specified time lapsed subsists and still the mortgagor can claim to redeem the property. Hence, this right of the mortgagor has come to be known as “*Equity of Redemption*”. The rule against clogs on the equity of redemption is that, a mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties. The principle behind the rule was explained in ***Santley v. Wilde [(1899) 2 Ch.474]*** by Lindley M.R in these words :

" The principle is this : a mortgage is a conveyance of land or an assignment of chattles as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage : and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is therefore void. It follows from this, that "once a mortgage always a mortgage".

Lord Davey in ***Noakes & Company vs. Rice [(1902) A.C.24]***

has observed “that a mortgage cannot be made irredeemable and that a provision to that effect is void.”

Hence, the doctrine of equity of redemption came to be expressed in the maxim ‘*Once a mortgage, always a mortgage*’ and this principle has taken now a firm footing in the form of Section 60 of the Transfer of Property Act. So long as the mortgagor had a right to redeem the mortgage, he can always pay-off the debt together with interest to the mortgagee and get back possession of the mortgaged property. This position would continue so long as the property is not sold under a final decree of sale brought about in accordance with the provisions of Order XXXIV of the Code of Civil Procedure.

It is apt to recall in this context the principle enunciated 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.

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.”

Therefore, we permit the petitioner to deposit a sum of Rs.26.15 lacs insofar as item No.2, which is described as open land/plot located at Chittoor District, Tirupati Sub District, Tirupati Avilala Village in Survey No. 20-B-2, is concerned. Subsequently, the said land is subdivided into Survey No. 20/B/2C, plot No. 10 admeasuring 2257.50

square feet or 250.83 square yards standing in the name of Sri K. M. Raj Sekhar. Insofar as property No. 3 open plot/land located at No. 49, Avilala Village Accounts in Survey No.20-B-2, which was subsequently sub-divided as Survey No.20/B/2C, plot No. 13 admeasuring 1890 square feet or 210 square yards standing in the name of Sri K.M. Raj Sekhar is concerned, we also permit the petitioner to deposit a sum of Rs.23.90 lacs. Apart from these two monies, the petitioner is also required to deposit the incidental expenses incurred by the 1st respondent bank towards undertaking securitization measures so far. Let these monies be deposited in one or more than one installment, but however, whole of the money shall be deposited on or before 30.04.2016, failing which, it shall be open to the 1st respondent bank to confirm the sale in favour of the highest bidder, receive the balance 75% of the bid amount, execute a sale certificate, register it and deliver vacant possession of the property so purchased by them.

The petitioner shall also deposit a sum of Rs.50 lacs on or before 30.04.2016 and upon such deposit being made, property No.1, which is stated to be a open plot admeasuring 4840 square yards, Balaji District Registrar Office, Tirupati, Chittoor District, shall not be put to re-auction again. If the petitioner commits default, once again, in depositing Rs. 50 lacs on or before 30.04.2016, it shall be open to the 1st respondent bank this time around to make sure that the advertisement receives wider publication.

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

31st March 2016

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[\[1\]](#) AIR 1971 SUPREME COURT 310