

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
WRIT PETITION No. 11711 OF 2016

% Dated 11.04.2016

G. Yadaiah

.... Petitioner

Vs.

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

....Respondents

! Counsel for the Petitioner : Sri D. Raghavulu

^ Counsel for the 1st respondent :

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> HEAD NOTE:

? 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. 11711 OF 2016

G. Yadaiah

.... Petitioner

Vs.

State Bank of Hyderabad,
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JUDGMENT PRONOUNCED ON : 11.04.2016

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AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 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? | yes |

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No. 11711 OF 2016

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

The petitioner in this Writ Petition challenges the validity of the tender-cum-auction sale notice, dated 10.02.2016 published by the Authorized Officer of the 1st respondent State Bank of Hyderabad proposing to conduct the sale on 14.03.2016 from 11.00 A.M. to 1.00 P.M.

It is not in dispute that the petitioner has availed certain financial assistance from the respondent State Bank of Hyderabad and he committed default in repaying the loan amount. Therefore, the loan account has been declared as a '*non-performing asset*' by the bank and measures 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'), for securitization of the loan account, have been undertaken by it. When the demand notice issued under sub-section (2) of Section 13 providing sixty days' time to liquidate the liability did not evoke any response from him, the follow-up action contemplated under sub-section (4) of Section 13 has been initiated by putting to sale the secured asset. E-auction sale notice was published by the 1st

respondent on 10.02.2016 in the New India Express. The last date for submission of request letter for participation and furnishing the relevant documents and proof of EMD was put as 11.03.2016 05.00 P.M. The minimum reserve price fixed was Rs.28.10 lacs. At that stage, the petitioner herein seems to have approached the Debts Recovery Tribunal at Hyderabad by instituting S.A.No. 79 of 2016 on or around 07.03.2016. The Debts Recovery Tribunal, entertaining the same on 11.03.2016, passed an order while holding that no ground is made out to interfere with the action of the respondent bank, but however, liberty was granted for participation in the auction process. The respondent bank and the service provider were directed to make necessary arrangement, so that the applicant before the Debts Recovery Tribunal participates in the bidding process without any pre-deposit so as to enable the applicant to take the property at the highest price and only in the event the applicant before the Debts Recovery Tribunal emerges as the highest bidder, but fails to deposit the amount, then the second highest bidder would get the opportunity to purchase the secured asset put to sale. The matter was again fixed to 16.05.2016 for further hearing.

It is the case of the petitioner before us that in spite of his approaching the respondent bank and then offering to participate in the e-auction sale slated for 14.03.2016, the respondent bank has not generated the necessary password and consequently, the petitioner could not participate in the said auction sale. Hence, the present Writ Petition is instituted.

We are at a loss to understand the true purport of the orders passed by the Debts Recovery Tribunal on 11.03.2016 in S.A.No. 79 of 2016 instituted by this very writ petitioner. While making any assessment of balance of convenience, particularly when the Debts Recovery Tribunal has not found anything improper in the action of the respondent bank, should we be reasonable and practical too. If an

order is passed on 11.03.2016, it becomes so difficult for the bank and the service provider as well to comply with the said order before 05.00 P.M. on the same day. When once a minimum reserve price/upset price is fixed and a condition is incorporated in the terms of the auction sale that 10% of the minimum reserve price/upset price has got to be paid as Earnest Money Deposit (EMD), the same cannot be asked to be dispensed with by the Debts Recovery Tribunal in the case of the applicant before it, the present writ petitioner. The conduct of the writ petitioner herein does not warrant any such extraordinary measure to be undertaken by the Debts Recovery Tribunal. The writ petitioner is a defaulter. He had not complied with the demand notice raised under sub-section (2) of Section 13 of the SARFAESI Act, in spite of issuing him a minimum of sixty days notice. It is only thereafter that the measures under sub-section (4) of Section 13 of the SARFAESI Act have been initiated by the respondent bank. Further, the respondent bank is required to conduct the sale of immovable secured assets by strictly following the legal regime prescribed under Rule 8 read with Rule 9 of the Security Interest (Enforcement) Rules, 2002, which have been framed under Section 38 of the SARFAESI Act by the Central Government. They are enforceable rules. Rule 8(6)(e) requires depositing of earnest money as stipulated by the secured creditor. Across the spectrum, all secured creditors have prescribed deposit of 10% of the minimum reserve price/upset price as earnest money. Hence, it has got to be deposited. For what reasons the Debts Recovery Tribunal has preferred the respondent bank not to follow Rule 8(6)(e) is not clear at all. The Debts Recovery Tribunal, therefore, in our opinion, went wrong in issuing the directions as it did on 11.03.2016. Unless the competent Court records a finding that fixing 10% of the minimum reserve price/upset price as EMD is unreasonable or unwarranted, it is not open to the Court to dispense with payment of any such EMD. Further, such a favour cannot be

conferred upon the applicant before the Debts Recovery Tribunal, who is the writ petitioner herein. There may be several persons, who may be equally-interested in participating in the e-auction sale mode. If the requirement of depositing EMD at the rate of 10% of the minimum reserve price/upset price is to be dispensed with, hundreds of people would queue up, so that they can indulge in speculation and if possible, derive some advantage or benefit thereafter. For instance, if EMD is not deposited by a bidder, he would show no restraint whatsoever in offering his bids. In the process, he will not hesitate to offer unrealistic and totally fanciful bids. He can always resile from the said bidding process at any later stage, because he loses nothing and his money in the form of EMD is not available with the banker for him to suffer any loss, hardship or difficulty in the process. If a bidder, ultimately, emerges as the highest/best bidder, he has the fundamental obligation to comply with the requirement of making a deposit in accordance therewith. Initially, he has to deposit 15% of his bid amount, so that together with the 10% EMD already deposited by him prior to participation in the bidding process, he would have paid 25% of his bid amount. If he fails to pay this 15% initially, or even subsequently, to pay balance 75%, the secured creditor will acquire a right to forfeit the 10% EMD. That is the pain, which compels the bidder not to indulge in speculation or fanciful offers being made. That would also help in a genuine and realistic competition amongst the purchasers. One would go as far as one is required to only in such a situation. In such circumstances, the prospects of realizing the upfront initial amount of 15%, after the bidding process has come to an end, and the balance 75% would be truly bright and realistic. Lest, the activity will reduce itself into a meaningless exercise. Therefore, the Debts Recovery Tribunal ought to have been very careful and cautious while passing such orders.

Be that as it may, 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.

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. Therefore, all we need to observe in this case is that if the petitioner immediately approaches to deposit either the entire loan amount, which is outstanding, or at least

such amount, which is equivalent to the highest bid offered at the auctions that were conducted on 14.03.2016, together with costs and incidental expenses incurred by the respondent bank for the securitization measures, including any interest payable to such highest/best bidder, which may not exceed 9% per annum on the monies so deposited, his right to redeem the property subsists.

As requested by Sri D. Raghavulu, learned counsel for the petitioner, if the sale certificate has not yet been registered by the respondent bank in favour of the best bidder, it may not do so till 18.04.2016 05.00 P.M. before which time, the petitioner seeks to redeem his property.

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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