HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.35266 and 37598 of 2016

Common Order: (per V.Ramasubramanian, J.)

One of the Directors of a Private Limited Company which borrowed money from the Bank of India and the wife of another Director, who guaranteed the repayment of the loan, came up with the 1st writ petition W.P.No.35266 of 2016 seeking a *mandamus* to direct the Debts Recovery Tribunal, Kolkata, to grant extension of time for complying with a conditional order passed on 31-8-2016. After notice was ordered in the said writ petition, the Bank issued a Sale Certificate in favour of the auction purchaser, forcing one of the petitioners in the 1st writ petition to come up with the 2nd writ petition W.P.No.37598 of 2016.

2. Heard Mr. R.Raghunandan, learned Senior Counsel for the petitioners, Ms. V.Dyumani, learned counsel for the Bank and Mr. L.Ravichander, learned Senior Counsel on behalf of the auction purchaser.

3. Sans unnecessary details, it may be recorded that the company which borrowed funds, failed to repay. After the account was classified as non-performance asset, a Demand Notice dated 09-10-2015 was issued. It was followed by a Possession Notice dated 20-4-2016. Thereafter, an Auction Notice dated 26-4-2016 was issued, fixing the date of auction as 27-5-2016.

4. Challenging the Auction Sale Notice, dated 26-4-2016, fixing the date of auction as 27-5-2016, the petitioners in the 1st writ petition filed S.A.No.189 of 2016 on the file of the Debts Recovery Tribunal, Hyderabad. In the meantime, the auction got postponed to 15-6-2016.

5. On 15-6-2016, the Tribunal passed an interim order, which reads as follows:

> "Ld. Advocate Mr. T.Vijay Kumar appears for the Applicant.
>
> Ld. Advocate Ms. A.Das appear for the Respondent Bank.
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> The present application filed by the Applicant praying, *inter alia*, for stay of the sale of the mortgaged property proposed to be held today. The main contention of the Applicant is that the Rule 8(6) and 8(7) of the SARFAESI Act has not been compiled by the Bank, hence, the sale should not take place.
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> Ld. Advocate for the Bank confirmed that the property has been sold.
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> In the above circumstances, it is ordered:
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> 1) The Respondent Bank is directed to file all the documents pertaining to the sale and serve copy of the same upon the Applicant by 24/06/16.
>
> 2) Till the next date the Bank shall not issue Sale Certificate.
>
> Let the matter be fixed for further hearing on 28/06/16.
>
> Copy of this order be given to the parties."

6. It appears that the Bank proceeded with the auction on 15-6-2016, on the ground that as per the aforesaid order, they were only prevented from issuing a Sale Certificate, but there was no stay of the auction itself. The auction was an e-auction, for which the upset price fixed was Rs.one Crore. It appears that there was only one bidder who offered

an amount of Rs.1,10,00,000/-. On account of the fact that there was only one bidder, who offered to take the property for Rs.1,10,00,000/- the Bank appears to have received from the successful bidder 25% of the bid amount partly on 15-6-2016 and partly on the next day, namely, 16-6-2016. However, the confirmation was not made.

7. Thereafter, the appeal S.A.No.189 of 2016 came up for hearing before the Debts Recovery Tribunal, Hyderabad. According to the learned Senior Counsel for the petitioners, the writ petitioners made an offer to redeem the property. Therefore, the Tribunal passed an order on 31-8-2016, which reads as follows:

> "Ld Advocate Shri V.Sethumadhava Rao for Respondent Bank and Shri G.Dinesh Kumar for Applicant are present.
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> Ld Advocate for the Applicant want to redeem the property and now apprehend that the Bank may take physical possession. The Applicant is ready to deposit the entire amount due and redeem the property within 8 weeks.
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> The Ld Advocate for the Bank submitted they have no objection of redemption. But the guarantee liability should continue and shall not be extinguished by redeeming the property.
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> Considering the contention of the property, the applicant is directed to deposit 25% of the dues within 2 weeks hereof and balance of 75% of sale consideration in 4 weeks thereof failing which the Bank shall proceed with confirming the sale and issuance of sale certificate.
>
> In the event, the applicant deposits the aforesaid amount, the Bank shall return to the amount deposited by the highest bidder with interest @ 8% p.a., within 2 weeks thereafter the amount to be paid as interest by the applicant.
>
> Till such time, the Bank shall not take any coercive action unless there is default by the applicant."

8. According to the learned Senior Counsel appearing for the petitioners, the aforesaid order was passed by the Tribunal, after taking note of the fact that the reserve price for the property was fixed at Rs.one Crore in the Auction Sale Notice. In other words, his contention is that as per the interim order dated 31-8-2016 passed by the Tribunal, the petitioner was supposed to pay Rs.25,00,000/-, within two weeks and the balance of Rs.75,00,000/- within four weeks thereafter.

9. Though the petitioners deposited Rs.25,00,000/- within two weeks, they could not make payment of 75% of the sale consideration within four weeks thereafter.

10. Therefore, the petitioners took out an application in I.A.No.2673 of 2016 before the Tribunal for extension of time. It appears that the Debts Recovery Tribunal did not pass any order on the application for extension of time.

11. Therefore, taking that the conditional order dated 31-8-2016 was not complied with by the petitioners both in letter and spirit, the Bank issued a letter of confirmation of sale to the highest bidder on 30-9-2016. The highest bidder seems to have paid the balance sale consideration on 06-10-2016. Immediately, the Bank has issued a Sale Certificate on 06-10-2016. Therefore, one of the petitioners in the 1st writ petition has come up with the 2nd writ petition.

12. Though several contentions are raised, with regard to the validity of the auction conducted by the Bank, we are of

the considered view that one important contention is sufficient for the disposal of the writ petitions. This contention revolves around the interpretation to be given to the order of the Debts Recovery Tribunal dated 31-8-2016.

13. According to the petitioners, the Bank as well as the Debts Recovery Tribunal agreed that the petitioners may be entitled to redeem the property upon payment of the reserve price of Rs.one Crore and that this is why the Tribunal used the expression "sale consideration" in its order dated 31-8-2016. The Tribunal also imposed a condition that even if the property is redeemed, the guaranty liability would due.

14. In contrast, the Bank has taken a stand that by using the expression "25% of the dues", the Tribunal actually wanted the petitioners to pay 25% of the total amount due and not 25% of the sale consideration or the reserve price. According to the Bank, the expression "sale consideration" used in the order dated 31-8-2016 is erroneous.

15. Thus, we are confronted in these two writ petitions with a question as to whether the use of the expression "dues" was wrong or the use of the expression "sale consideration" by the Tribunal in its order dated 31-8-2016 was wrong. We would have been spared of the task of interpreting an order of the Tribunal, had the Tribunal considered and disposed of the application for extension of time in I.A.No.2673 of 2016. But unfortunately, the Tribunal

could not dispose of the said application for extension of time, for want of a Presiding Officer at that time.

16. A combined reading of the 1st order dated 15-6-2016 and the next order dated 31-8-2016 passed by the Tribunal would show that though the petitioners originally assailed the sale as being violative of Rules 8(6) and 8(7) of the Security Interest Rules, the petitioners offered to redeem the mortgage in the next date of hearing. The next date of hearing was fixed as 28-6-2016, in the order dated 15-6-2016. But the Tribunal could not take up the appeal either on 28-6-2016 or even thereafter until 31-8-2016.

17. Since the Bank itself had fixed the reserve price at Rs.one Crore, combined with the fact that there was only one bidder in the auction who offered a paltry sum of Rs.10,000/- over and above the reserve price, to knock the property, the Tribunal seems to have granted a concession to the petitioners by order dated 31-8-2016. Unfortunately, the mixing up of different expressions in the order dated 31-8-2016 has given rise to conflicting stands being taken by both parties.

18. As rightly contended by the petitioners, if what the Tribunal wanted was actually a payment of 25% of the entire dues, the Tribunal could not have used the expression "75% of the sale consideration". Additionally in the 3rd paragraph of the order dated 31-8-2016, the Tribunal has recorded that

the guarantee liability should continue and should not be extinguished by redeeming the property.

19. A look at the sale notice would show that only one property belonging to the borrower was brought to sale. Even according to the learned counsel for the Bank, there was another property mortgaged to the Bank. If the entire dues to the Bank had been agreed to be repaid, on 31-8-2016, there was no way the Bank could have retained the guarantee liability. It must be noted that the order dated 31-8-2016 was an order passed on consent of parties. If the Bank had agreed to take the entire dues before the Tribunal, the Bank could not have insisted upon retaining the guarantee liability, as no purpose would have been served when there were no dues to the Bank.

20. Therefore, we are of the considered view that the order of the Tribunal dated 31-8-2016 has to be read in such a manner that (1) by accepting payment of the reserve price of Rs.one Crore from the petitioners and allowing them to redeem the property and (2) by retaining their guarantee liability along with the other mortgaged property, chances of recovery of the balance due to the Bank itself was brighter. Therefore, if we interpret the order dated 31-8-2016 as conferring a benefit upon the Bank, the only way we could do so is to read it in such a manner as to enable the petitioners to take this property by offering the sale consideration of Rs.1,10,00,000/- or the reserve price of Rs.one Crore. This is

the only manner in which the interests of the borrower as well as the Bank could have been saved and this is what the Bank had agreed before the Debts Recovery Tribunal on 31-8-2016.

21. If once the interpretation to be given to the order dated 31-8-2016 is clear, then the only question to be decided is as to whether the petitioners were entitled to the enlargement of time to comply with the 2nd condition. Admittedly, the 1st condition namely that of depositing Rs.25 lakhs within two weeks, has been complied with by the writ petitioners. Once the petitioners had complied with the 1st condition, before the expiry of two weeks from 31-8-2016, then it follows as a corollary that up to the expiry of four weeks from 12-9-2016, the date on which the 1st condition was fulfilled, the Bank could not have confirmed the auction. But unfortunately, the Bank had confirmed the auction on 30-9-2016, on the spacious plea that the amount that was required to be deposited was 25% of the dues and not 25% of the reserve price or sale consideration. This confirmation, in our considered view, is contrary to the order of the Tribunal dated 31-8-2016. Once this is found to be contrary to law, the confirmation as well as the issuance of Sale Certificate should fall to the ground.

22. Normally once we reach a conclusion that a sale had taken place in violation of an order passed by the Tribunal, it should follow as a corollary that the sale should be set aside and the matter should be left at that. But we do not wish to

do that, as a person who seeks equity should do equity. The petitioners have come to Court invoking the equity jurisdiction. If this Court stops by setting aside the sale, the Bank will have to issue a fresh notice and the auction purchaser will have to take back the amount paid. The auction purchaser has already spent Rs.6 lakhs for registration of the sale deed. Therefore, we are of the considered view that the petitioners cannot get away with a clean chit, by having the sale set aside without any further conditions. By directing the petitioners to pay the interest at 8%, as fixed by the Tribunal by its order dated 31-8-2016 to the auction purchaser and also by directing the petitioners to pay the amount of Rs.6 lakhs spent by the auction purchaser towards stamp duty and registration charges, the Court could do equity to all the parties before us.

23. Therefore, the writ petitions are disposed of to the following effect:

(1) The petitioners, who were liable to pay 75% of the sale consideration, namely, Rs.75,10,000/- (Rupees seventy five lakhs and ten thousand only), have paid during the pendency of this writ petition a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) on 12-10-2016 and 13-10-2016. Therefore he shall pay a sum of Rs.50,10,000/- on or before 31-12-2016 to the Bank.

(2) Along with the aforesaid amount, the petitioners shall also deposit with the Bank an amount equivalent to interest at 8%, on the amounts so far deposited by the auction purchaser, calculated from the date of deposit up to the date of repayment.

(3) The petitioners shall also deposit the amount of Rs.6,00,700/- (Rupees six lakhs and seven hundred only) paid by the auction purchaser towards stamp duty and registration charges, along with the aforesaid amounts.

(4) If the petitioners comply with the above conditions, the sale in favour of the auction purchaser shall stand set aside. In case the petitioners fail to comply with the conditions imposed as above, the sale certificate will stand and no indulgence is required to be shown to the petitioners.

(5) As agreed to before the Debts Recovery Tribunal, on 31-8-2016, the property which is now the subject matter of the present dispute, shall continue with the Bank, but the same shall not be proceeded against, until the Bank proceeds against the other mortgaged properties of the borrower company. This is by way of a security for ensuring that the Bank also collects the remaining dues from the borrowers.

(6) Once the petitioners comply with the order, the deed of cancellation of the sale shall also be registered at the cost of the petitioners and the auction purchaser shall be refunded the amount paid by him together with interest at 8% p,a and the costs of Rs.6,00,700/- incurred towards stamp duty and registration charges.

24. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

14th November, 2016.
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(per VRS, J.)

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