THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

<u>WRIT PETITION No. 39843 OF 2015</u>

<u>O R D E R:</u> ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

The State Bank of India is the petitioner in this Writ Petition, which was directed against the order passed by the Debts Recovery Tribunal, Hyderabad in S.A.No. 284 of 2012 dated 30.11.2015.

Heard Sri P. Rama Sharana Sharma, learned counsel for the petitioner and Sri Ravinder Udiga, learned counsel for Respondents 1 to 6.

The 7th respondent is the purchaser of the secured asset in the auctions that were conducted by the writ petitioner. He has not been served with the notice in this Writ Petition so far, it looks like, as no acknowledgment of the receipt of the notice is available on record. Notices have been dispatched to his address promptly by this Court as well as the learned counsel for the petitioner bank. We therefore, presume that he has been served with the notice of this Writ Petition and in the view that we have taken in the matter, perhaps, even if the notice is not served on him, it may not make a serious difference to him.

Respondents 1 to 6 herein have availed certain financial assistance from the petitioner bank and committed default in properly recycling the debt. As a result, the loan account has become a *'non-performing asset'* and the petitioner bank has taken securitization measures, as provided for under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

It is not in dispute that the petitioner bank, it being the State Bank of India's branch, answers the description of *'bank'* as defined in Section 2(1)(c) of the SARFAESI Act. Sofar as Respondents 1 to 6 are concerned, they answer the description of *'borrower'* as defined in

Section 2(1)(f). The *'security interest',* as defined in Section 2(1)(zf), which has been created by them over a set of immovable properties makes it liable to be proceeded against under Section 13 of the SARFAESI Act.

In the instant case, a demand notice dated 03.08.2011, calling upon the borrowers to repay the amount of Rs.69,18,227/- as on 03.08.2011 + unpaid interest from 01.01.2011, was issued. It was fairly non-responsive. The outstanding liability has not been completely liquidated. Hence, the follow-up measures provided for under sub-section (4) of Section 13 have been initiated.

A notice of intended sale of the secured asset drawn under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 on 29.01.2015 and dispatched by Registered Post on 03.02.2015 was, in fact, avoided to be received by Respondents 1, 2, 4, 5 and 6 and the 3rd respondent Sri B. Venu has received it on 07.02.2015. When once one set of borrowers receives the notice, it must be construed that remaining borrowers/guarantors, who also answer the same definition of *'borrower'* have knowledge about the notice drawn and issued under Rule 8(6). It is thereafter, on 11.02.2015, publication was taken out in newspapers about the intended sale by *e*-auction mode. The said notice was got published setting 14.03.2015 as the date of auction. Thus, in between these two dates, clear thirty-days' time is maintained as is required by Rule 9(1) of the Rules. We are informed that at the auctions so held, the secured asset has been sold for Rs.2,29,00,000/- and the 7th respondent purchaser has complied with the terms of the auction sale and deposited the entire amount and spent considerable amount for getting the sale certificate issued to him registered also. Consequently, the sale certificate was registered duly transferring right, title and interest in the secured asset in favour of the 7th respondent purchaser. Hence, Sri Rama Sharana Sharma, placing reliance upon 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.
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> 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."

contends that the mortgagor's right to redeem the mortgaged debt got extinguished as per the action taken by the bank in accordance with law. In fact, the right of the mortgagor to redeem his property, as crystallized under Section 60 of the Transfer of Property Act, has also been reflected in sub-section (8) of Section 18 of the SARFAESI Act. But however, the Debts Recovery Tribunal has recorded the finding, in paragraph 9 of its order, dated 30.11.2015, as under:

> " Precisely, the notice for sale could be served upon the Applicants between 12.02.2015 to 17.02.2015, whereas the sale has to take place on 14.03.2015. There is no clear 30 days notice prior to sale as required under law. This is all because of callous attitude of the Bank Officer and the authorized officer, whereas the intimation of sale dated 29.01.2015. The second intimation was on 11.02.2015 which reached the applicants between 12^{th} to 17^{th} February, 2015. The authorized officer was ignorant of the fact that February is of 28 days and the service of notice under Rule 8(6) prior to sale is specially part of their job.
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> In the above circumstances, the sale has failed for non-compliance of provisions under SARFAESI Rules made thereunder. The Bank is directed to refund the money to the auction purchaser within 7 days with an interest @ 12% p.a.

S.A.No. 284/2012 is allowed without any costs to the parties."

Factually, the above finding is incorrect. The notice has been served on Sri B. Venu on 07.02.2015 and the newspaper publication is on 11.02.2015 in Eenadu and Hindu newspapers. Therefore, when time is reckoned from 12.02.2015, thirty-days time has ended on 13.03.2015 itself, whereas the auction sale took place on 14.03.2015 i.e. beyond the thirty-days time limit specified under Rule 9(1) of the Rules. Because of the erroneous calculation carried out by the Debts Recovery Tribunal, the impugned order was passed.

For this reason, we set aside the order dated 30.11.2015 and remand the matter back for consideration afresh to the Debts Recovery Tribunal, where the new purchaser should also be impleaded and notices should be delivered to him and he must be provided with an opportunity of hearing before any further action is taken thereon.

Sri P. Rama Sharana Sharma, learned Standing Counsel for the bank would also urge that the Debts Recovery Tribunal should be asked to examine as to whether the conduct of Respondents 1 to 6 herein would amount to waiver of notice as was held by the Supreme Court in ***General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbal and others***[2]***.*** Therefore, the Debts Recovery Tribunal will examine this issue also.

The Writ Petition stands allowed with this order. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

12th April 2016

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[1] AIR 1971 SUPREME COURT 310

[2] (2013) 10 SCC 83