

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

Writ Petition No.31098 of 2016

DATED:08-09-2017

Between:

J. Sithi Kantha Murthy ... Petitioner

And

State Bank of Hyderabad
Rep. by its Authorised Officer
Stressed Assets Management Department
King Koti Road, Abids, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. P. Sri Raghuram, Senior Counsel,
for Mr. P. Sri Ram

COUNSEL FOR RESPONDENT NO.1: Mr. K. Sai Rama Murthy,

COUNSEL FOR RESPONDENT NO.2: -

COUNSEL FOR RESPONDENT NO.3: Mr. G. Bhadraiah

THE COURT MADE THE FOLLOWING:

ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This writ petition is filed for a mandamus to declare the e-auction-cum-sale notice, dated 28.07.2016, whereby the auction of flat No.6401 of Sri Vishnu Grandhi Vista Residential Complex, Block No.3, situated at Gajularamaram Village, Qutbullapur Mandal, Ranga Reddy District, was proposed to be held, as illegal and arbitrary.

2. We have heard Mr. P. Sri Raghuram, learned Senior Counsel appearing for the petitioner, Mr. K. Sai Rama Murthy, learned counsel for respondent No.1, and Mr. G Bhadraiah, learned counsel for respondent No.3.

3. In his affidavit, the petitioner has averred that he holds agreement of sale dated 16.06.2016, in respect of the aforementioned flat, that he had paid Rs.20,00,000/- to respondent No.2, that to his shock and surprise, he came to know that in the e-auction-cum-sale notice dt.28.07.2016 issued by respondent No.1 – bank, flat No.6401 has been included in lot No.1 in the said notification and that as per the said notification the last date for receiving bids was 29.08.2016 and the date of auction was 31.08.2016. The petitioner further averred that on seeing the said notification he has approached respondent No.1 expressing his willingness to pay the due amount with a request to release the flat from the auction proceedings. He has also averred that at the time of entering into agreement of sale, he is not aware of the securitization proceedings initiated by respondent No.1 bank and that as the encumbrance certificate obtained by him for the period 2007 to 2016 did not contain any entry of encumbrance, he bona fide believed that the flat was free from encumbrance. The petitioner referred to clause 5 of the agreement wherein it is stipulated that the petitioner has to make payment of

Rs.25,81,000/- to respondent No.1 bank and stated that he was not informed that the flat was under mortgage of respondent No.1. It is the further grievance of the petitioner that the information gathered by him subsequently revealed that respondent No.2 approached the Debts Recovery Tribunal (DRT) by filing S.A. No.253 of 2012 and without the permission of respondent No.1 it has entered into agreements of sale in respect of various flats, including Flat No.6401, and that the said respondent has failed to secure an order of stay of e-auction notice dt.28.07.2016. While pleading that he has entered into an agreement of sale bona fide with respondent No.2, he has averred that the auction would cause irreparable injury to him. The petitioner has further averred that excluding Flat No.6401 from the auction would not cause any loss to respondent No.1 bank as he has agreed to pay more than the amount offered by the prospective purchaser in the e-auction notice.

4. On 15.09.2016 this Court while ordering notice in the writ petition granted stay of auction of the flat on condition of the petitioner paying to respondent No.1 not less than Rs.25,81,000/- before the schedule date and time of the auction, failing which, respondent No.1 shall be free to proceed with the auction.

5. One Mr. G. Vikram Kumar filed W.P.M.P. No.47468 of 2016 seeking his impleadment. It is stated in his affidavit that he has participated in the auction held on 31.08.2016 and was declared as successful bidder vide proceedings dt.31.08.2016 issued by the Authorized Officer of respondent No.1 duly acknowledging a sum of Rs.6,45,250/- representing 25% of the bid amount of Rs.25,81,000/-, and that in pursuance of the interim order of this Court, respondent No.1 issued proceedings dt.20.09.2016 informing him that this Court has stayed the

auction. He has further stated that respondent No.1 has issued another proceedings of even date wherein it has informed that the writ petitioner has complied with the conditional order by depositing a sum of Rs.25,81,000/- by way of demand draft dt.14.09.2016 apart from paying Rs.25,000/- over and above the highest bid amount of Rs.25,81,000/-. The implead party applicant also alleged collusion between the writ petitioner and respondent No.2 by creation of a non-existing agreement of sale to defeat the claim of respondent No.1 and also the implead party applicant.

By order dt.14.6.2017 the implead party applicant was impleaded as respondent No.3.

6. On behalf of respondent No.1 – bank, a vacate stay application was filed.

7. At the hearing, the learned Senior Counsel for the petitioner, submitted that his client being bona fide holder of agreement of sale, deposited more than the highest bid amount offered by respondent No.3 and that as per Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as, “the Act”), as it stood prior to its amendment from 01.09.2016, if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset. In support of his submission, he has placed reliance on a Division

Bench judgment of this Court in *India Finlease Securities Ltd. v. Indian Overseas Bank*¹.

8. The learned counsel for respondent No.1 - Bank submitted that since the writ petitioner has discharged the dues owed by respondent No.2 borrower in compliance with the conditions stipulated by this Court, the bank has not proceeded with confirmation of the auction. As regards the competing claims of the parties, the learned counsel has submitted that as the bank was able to recover the dues, for the non-payment of which the flat was brought to sale, it is no longer interested in proceeding with the auction. He has however submitted that the bank will abide by the decision of the Court.

9. The learned counsel for respondent No.3 stated that the petitioner failed to substantiate his plea that he is an agreement holder and that therefore no enforceable rights accrued to him. He has further submitted that under Section 13(8) of the Act, before its amendment, payment of the dues to the secured creditor is permissible only before the date fixed for sale or transfer, that 31.08.2016 being the date fixed for sale, the deposit of dues on 15.09.2016 does not satisfy the requirement of the said provision and that therefore respondent No.1 has no option other than confirming the sale in favour of his client after receiving the balance sale consideration.

10. From the submissions of the learned counsel appearing for the parties, the points that arise for consideration are:

- (i) Whether any indefeasible right came to be vested in respondent No.3 by his emerging as the highest bidder?

¹ 2012 (6) ALD 345 (DB)

- (ii) Whether the petitioner has satisfied the requirements of the provisions of sub-section (8) of Section 13 of the Act?

Re point (i):

11. Rule 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “the Rules”) deals with time of sale, issues of sale certificate and delivery of possession of the property etc. Under sub-rule (2), the sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor. Under sub-rule (3), on every sale of immovable property, the purchaser shall immediately deposit twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again. Under sub-rule (4), the balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties. Sub-rule (5) envisages that in default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold. Under sub-rule (6), on confirmation of sale by the secured creditor, if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these Rules.

12. From a reading of Rule 9 with the relevant sub-rules as discussed above, it is manifest that merely by emerging as a highest bidder or

paying 25% of the bid amount, an absolute right over the property would not inhere in the auction purchaser. The successful bidder has not only to pay the balance purchase price before the expiry of 15th day after confirmation of sale, but also to obtain the sale certificate of the immovable property. In ordinary course, the highest bidder can seek enforcement of his right for confirmation of sale and issue of sale certificate on payment of balance purchase money if the auction of the property conforms to the requirements of Rule 9 of the Rules. However, his right in this regard is subservient to the right of the person interested in the asset to pay off the dues before the time stipulated in Section 13(8) of the Act. In the instant case, though respondent No.3 has paid 25% of the bid amount as required under Rule 9(3) of the Rules, he has not paid the balance purchase money on the ground that formal order of confirmation of sale was not made. It is not disputed by the learned counsel for respondent No.1 bank that a formal order confirming the sale was not issued by either the authorized officer or secured creditor i.e., the Bank. Therefore, since the time for payment of the balance amount begins only from the date of confirmation of sale, it cannot be gain said that the obligation of respondent No.3, to pay balance sale consideration has not commenced. As observed hereinbefore, his right to insist on confirmation of sale, receiving the balance purchase money, and issue of sale certificate, however, depends upon the compliance or otherwise of requirements of Section 13(8) of the Act, by the borrower or the person interested opposing the sale or auction. This point is accordingly answered.

Re point (ii)

12. The issue in controversy between the rival parties is whether the petitioner has paid the dues in terms of Section 13(8) of the Act in order to avoid completion of sale in pursuance of the auction? In the instant case, the auction was conducted on 31.08.2016. With effect from 01.09.2016 Section 13(8) of the Act was amended. Therefore, the pre-amended provision is applicable to the present case. This provision reads as under:

“(8). If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of the secured asset.”

The learned counsel for respondent No.3 vehemently submitted that in order to stop further steps in pursuance of the auction notification, the dues of the secured creditor together with all costs, charges and expenses incurred by him shall be tendered at any time before the date fixed for sale or transfer. In support of this plea, the learned counsel has placed reliance on a Division Bench judgment of the Madras High Court in *K. Chidambara Manickam v. Shakeena*². Per contra, the learned Senior Counsel for the petitioner relied upon *India Finlease Securities Ltd.* (1 supra).

13. In *India Finlease Securities Ltd.* (1 supra), the Division Bench of this Court while interpreting the phrase “at any time before the date fixed for sale or transfer”, held as under:

“21. Sub-section (8) of Section 13, in our view, permits two contingencies where the borrower has a right to redeem the property. "At any time before the date fixed" cannot be said to be exclusively intended for 'sale' only, it was

² AIR 2008 Madras 108

intended to be applied to 'transfer' also. Otherwise, there is no meaning in employing the words 'transfer' and 'transferred' in sub-section (8). Under the first contingency, if the borrower tenders the dues of the secured creditor together with all costs, charges and expenses incurred at any time before the date fixed for sale, then the secured asset shall not be sold in the auction. However, if the borrower failed to tender the dues before the date fixed for sale, the authorized officer will proceed further in the matter. However, the right of the borrower to redeem the property thereafter is not extinguished. He has still the right to redeem the property but at any time before the date fixed for transfer of the property. So long as the sale is not confirmed by the secured creditor as required under the Rules, the right of the borrower to redeem the property under the second contingency is not taken away. He has a right to redeem the property before the confirmation of the sale by the secured creditor under the Rules. Mere sale is not enough to conclude that the property is transferred to the purchaser. From a reading of Clause (a) of sub-section (4) of Section 13, it is clear that the secured creditor has the right to transfer the secured asset by way of lease, assignment or sale. Therefore, sale will be complete by transfer of property either by confirmation of sale by written proceedings of the 'secured creditor' or by issuance of a sale certificate by the 'authorized officer' as required under sub-rule (6) of Rule 9 of the rules. Till the sale is confirmed by the 'secured creditor' as required under the Rules, it cannot be said that there is a valid transfer of property within the meaning of sub-section (8) of Section 13.

22. No doubt the Supreme Court in Narandas Karsondas's case [(1977) 3 SCC 247] held that issuance of sale certificate is a ministerial act. But, the Supreme Court in Arvind Kumar's case [(2007) 5 SCC 745] and Sagar Mahila Vidyalaya's case [(1991) 3 SCC 588] held that sale will be complete only when the property is transferred on confirmation of sale. If the borrower has been able to repay the dues of the secured creditor together with all costs, charges and expenses incurred at any time before the date of confirmation of sale by the secured creditor, then, in that event, the secured asset shall not be transferred by the secured creditor and no further steps be taken. This is the plain interpretation of the language employed in sub-section (8) of Section 13.

23. One of the basic principles of interpretation of statutes is to construe them according to plain literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would

be repugnant to the intention of the Act or lead to some manifest absurdity (See Craies on Statute Laws, Seventh ed. Pages 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or suggest the contrary (See Chapter - The Rule of Literal Construction -page 78-Ninth Ed.). In Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd. AIR 1955 SC 376, S.R. Das, J (as his Lordship then was) said:

“The cardinal rule of construction of statutes is to read the statute literally that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.”

24. The ordinary, natural and grammatical meaning of the phrase 'at any time before the date fixed' employed in sub-section (8) of Section 13 of the Act is clear that the Legislature has intended that the phrase has application both for 'sale' and 'transfer' and not exclusively for 'sale' only and application of the phrase to the exclusion of 'transfer' is contrary to the intendment of the Legislature. From the language employed in the section, it is not possible to read down any other alternative construction.

Drawing the distinction between 'sale' and 'transfer', the Division Bench held that sale is not complete unless the property for which price was paid is transferred to the buyer by a written proceeding. On the above premises, the Division Bench held that as the debt was discharged prior to the transfer of the property, the borrower has complied with the requirement of Section 13(8) of the Act. With due respect, the Division Bench of the Madras High Court in *K. Chidambara Manickam* (2 supra) did not bestow its particular attention to the word “transfer” following the word “sale” in sub-section (8) of Section 13 of the Act, and held that “the borrower should have approached the secured creditor or the authorized officer before the date fixed for sale and not after the sale. In the light of the Division Bench judgment of this Court in *India Finlease Securities Ltd.*

(1 supra), which succinctly brought out the distinction between the 'sale' and 'transfer' and held that even after the sale at any time before the date fixed for transfer if the loan amount is discharged, no further steps in pursuance of the auction must be taken, the judgment in *K. Chidambara Manickam* (2 supra) is of no help to respondent No.3. This point is answered accordingly.

13. Before parting with this case, we would like to observe that the learned counsel for respondent No.3 has lamented that his client has parted with a substantial money towards 1/4th of the bid amount and that it is inequitable to deny him purchase of the flat. In our opinion, this submission is wholly misconceived. While respondent No.3 has paid only 1/4th of the bid amount, the petitioner, who was evidently taken for a ride by respondent No.2 by entering into an agreement of sale without disclosing the fact of pending litigation before the DRT and the measures initiated under the Act, has parted with the entire due amount to respondent No.1 – Bank besides paying substantial amount of Rs.20,00,000/- in favour of respondent No.2. If we weigh the hardship between the petitioner on one side and respondent No.3 on the other side, the hardship that may be suffered by the petitioner if the sale is allowed to be held would far outweigh the hardship respondent No.3 may suffer if sale is not confirmed. If the sale is not confirmed, at the most respondent No.3 may lose interest on Rs.6,45,250/- deposited by him. Therefore, apart from the legal position lying in favour of the petitioner, even the equity also lies in his favour.

14. For all the aforementioned reasons, the writ petition is allowed.

As a sequel to disposal of the writ petition, W.P.M.P. No.38479 of 2016 and W.V.M.P. No.4457 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

08-9-2017

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Note: LR copies to be marked.

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