THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.38583 of 2016

ORDER: (*Per* Hon'ble Sri Justice Gudiseva Shyam Prasad)

This is a Writ of Mandamus filed by the petitioner, M/s.Anand Regency Services Private Limited, to declare the action of respondents 1 and 2 in conducting e-auction of its properties as illegal and violative of Articles 14 and 300-A of the Constitution of India.

2. The brief facts of the case are that the writ petitioner has filed S.A.No.231 of 2016 before the Debts Recovery Tribunal, Visakhapatnam, questioning demand notice dated 11.01.2014 under Section 13(2) and a possession notice dated 02.04.2014 issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act), for recovery of outstanding loan of Rs.7,79,58,794/-. The writ petitioner has also filed I.A.No.570 of 2016 in the said SA, wherein the Tribunal directed the petitioner to deposit an amount of Rs.25 lakhs on 20.10.2016 and to pay further amount of Rs.75 lakhs within 10 days to withhold the e-auction. The petitioner has paid a sum of Rs.25 lakhs as per the directions of the Tribunal on 20.10.2016. Even after payment of the same, the e-auction was conducted, and the same is being challenged now in this writ petition as illegal.

3. Heard the arguments of Sri Ramesh Katikineni, learned counsel for the appellant, Smt.T.Vidya Rani, learned counsel for respondents 1 and 2 and Sri V.S.Raju, learned counsel for respondent No.3.

4. Learned counsel for the petitioner mainly raised three contentions in this writ petition. Firstly it is contended that the petitioner filed S.A.No.231 of 2016 before the Tribunal questioning the legality of the demand notice under Section 13(2) and possession notice under Section 13(4) of the SARFAESI Act issued by the respondent bank to the petitioner demanding to pay outstanding loan of Rs.7,79,58,794/-. The petitioner has also filed interlocutory application I.A.No.570 of 2016 and the Tribunal has passed an order on 19.10.2016 in the said IA, directing the petitioner to make payment of Rs.25 lakhs on 20.10.2016 and Rs.75 lakhs within 10 days, and in the event of payment of Rs.25 lakhs, the e-auction to be conducted on 20.10.2016 would be deferred.

5. It is further contended that on 20.10.2016, the petitioner has deposited an amount of Rs.25 lakhs as per the directions of the Tribunal. In spite of that, e-auction has been conducted on 20.10.2016 without following the order of the Tribunal. Therefore, it is contended that the sale conducted through e-auction is liable to be set aside.

6. The contention of learned counsel for respondents 1 and 2 is that the e-auction was scheduled to be held on 20.10.2016 between 11.00 am and 12.00 noon as per the e-auction sale notice. It is contended that the petitioner has deposited the amount of Rs.25 lakhs after e-auction is conducted at about 3.00 pm on 20.10.2016. It is further contended that the petitioner has not deposited balance of Rs.75 lakhs as per the directions given in I.A.No.570 of 2016, and therefore, he has violated the order dated 19.10.2016 passed by the Tribunal.

7. As far as the contention of the petitioner that it deposited the amount on the very next day as directed by the Tribunal is concerned, the petitioner has deposited the amount after the e-auction was conducted between 11.00 am and 12.00 noon as per the notification published in the paper. The petitioner ought to have deposited the amounts as per the directions of the Tribunal before conducting the e-auction sale for the bank authorities to defer from conducting the e-auction. In the instant case, as the amount was deposited subsequent to the conducting of the e-auction, and the balance amount of Rs.75 lakhs was also not deposited by the petitioner within 10 days as per the directions of the Tribunal, the respondent bank proceeded with e-auction.

8. It is further contended by the learned counsel for the petitioner that in pursuance of a letter of the bank, the Taluk Office, Yanam, Pondicherry, by proceedings dated 02.11.2016, has handed over the physical possession of the property to the bank

authorities. It is argued that issuance of proceedings dated 02.11.2016 would indicate that the bank had not taken possession of the property by the date of auction. It is appropriate to refer to the contents of the e-auction sale notice issued under the SARFAESI Act. It was mentioned in the notice that as the dues under the earlier notice dated 11.01.2014 issued under Section 13 (2) has not been paid, the possession of the scheduled property under Section 13(4) was taken on 02.04.2014 and 26.05.2014. The intending sale notice under Section 8(6) of the SARFAESI Act was issued on 09.09.2016. The Deputy Tahsildar-cum-Executive Magistrate, Yanam has issued proceedings dated 02.11.2016, which indicates that as per the order of the Deputy Collector (Revenue), Yanam-cum-Sub Divisional Magistrate, Yanam, the physical possession of the property belonging to the petitioner situated at Pondichery State, Yanam Sub Taluk, Kanakalpetta hamlet of Yanam, was handed over to the Authorised Officer, Bank of India, Rajahmundry Branch at 5.00 pm on 02.11.2016.

9. It is further contended by the learned counsel for the petitioner that on 02.11.2016, the petitioner has given a proposal for one time settlement expressing his willingness to pay a sum of Rs.4.50 crores within 45 days and the respondent bank has given a reply on 05.11.2016 stating that the ID under which the message was sent is not on record so as to authenticate the message and the petitioner was asked to send the same duly signed on its letter head and signed by authorised signatory, duly scanning the same,

for further action in the matter. The petitioner has sent a letter with one settlement proposal to the respondent bank. In the letter, the petitioner mentioned that it has remitted a sum of Rs.25 lakhs on 20.10.2016 as directed by the Tribunal and asked whether the e-auction deferred as per the order passed by the Tribunal. The said one time settlement proposal dated 05.11.2016 appears to have not been considered by the respondent bank. As a matter of fact, it is the discretion of the bank to consider the one time settlement proposal, and therefore, in this regard, the petitioner cannot make any demand for acceptance of its proposal on payment of Rs.25 lakhs on 20.10.2016. The Tribunal has not passed any order in respect of the one time settlement proposal, but the order passed only in respect of the sale which is to be conducted on 20.10.2016. Therefore, non-consideration of the one time settlement proposal by the bank is not fatal and requires no interference.

10. The third contention of the petitioner is that the petitioner has leased out the property to M/s.Manoharamma Hotel Investments Private Limited, vide lease deed dated 01.07.2014, for a period of nine years and the said hotel is being run in the said premises from 01.07.2014.

11. Learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company**

Ltd.[1], a decision of a Division Bench of this Court in **M.Amarender Reddy v. Canara Bank** (W.P.No.39735 of 2015 dated 11.04.2016) and a decision of Bombay High Court in **Blue Coast Hotels Limited v. IFCI Limited**[2].

12. It is argued by the learned counsel for the respondents that the property is not leased out to M/s.Manoharamma Hotel Investments Private Limited vide lease deed dated 01.07.2014 for a period of nine years from 01.07.2014 and that the lease deed is a created one. He further argued that the leased deed was not a registered document and the same is executed after issuance of Section 13(2) and 13 (4) notices, and therefore, the lease deed is not binding on the bank.

13. In **Harshad Govardhan Sondagar**'s case (1 supra), the Hon'ble Supreme Court in para 22 held as under:

> "22. We may now consider the nature of the right of the lessee and as to when the lease under the Transfer of Property Act gets determined. Sections 105 and 111 of the Transfer of Property Act, which are relevant in this regard, are quoted hereinbelow:
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> > **"105. Lease defined:-** A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
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> > **Lessor, lessee, premium and rent defined:-** The transferor is called the lessor, the transferee is called

[1] (2014) 6 SCC 1
[2] 2016 SCC ON Line Bom 2663

the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

111. Determination of lease:- A lease of immovable property, determines:-

(a) by efflux of the time limited thereby;
(b) where such time is limited conditionally on the happening of some event by the happening of such event;
(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event by the happening of such event;
(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;
(f) by implied surrender;
(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;
(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."

Section 105 thus provides that a lessee of an immovable property has a right to enjoy such property, for a certain time or in perpetuity when a lessor leases an immovable property transferring his right to enjoy such property for a certain time or in perpetuity. Section 111 of the Transfer of Property Act, 1882 provides the different modes by which a lease gets determined. Thus, so long as a lease of an immovable property does not get determined, the lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as

> provided in Article 300-A of the Constitution. As we have noticed, there is no provision in Section 13 of the SARFAESI Act that a lease in respect of a secured asset shall stand determined when the secured creditor decides to take the measures mentioned in Section 13 of the said Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals"

14. It is obvious that in the present case, the lease deed was executed for a period of nine years and it was not a registered document. Moreover, it was executed after issuance of Section 13(2) and 13 (4) notices. Therefore, the lessee has no right to continue the tenancy in the light of the above decisions.

15. It is argued by the learned counsel for the respondents that the petitioner has filed two applications i.e., IA.SR.No.2875 of 2016 and IASR.No.2876 of 2016 in SA.No.231 of 2016 to reopen SA.No.231 of 2016 to its original file and to grant of extension of time of 20 days to make the payment of Rs.75 lakhs. As the bank was trying to disposes of the properties, the said petitions were not entertained by the Tribunal and rejected the extension of time in IA.IR.No.2875 of 2016 for payment of the balance amount of Rs.75 lakhs as the petitioner could not fulfil the directions given by the Tribunal.

16. It is further argued that the petitioner has suppressed the orders of the Tribunal and also pendency of O.A.No.440 of 2015

filed by the bank claiming Rs.779.59 lakhs with further interest. It is submitted that the petitioner has raised all the issues, which it has raised in this writ petition, before the Tribunal in S.A.Nos.302 of 2014 and 25 of 2015 and also the present SA No.231 of 2016. It is also stated that the petitioner has also raised the similar issues before this Court by filing writ petition Nos.25840 of 2015, 32717 of 2015, 16368 of 2016 and 27889 of 2016, and this Court has dismissed all the writ petitions. It is further submitted that the petitioner, though having a provision to prefer appeal under Section 18 of the SARFAESI Act before the DRAT, Kolkata, it has preferred the above writ petitions before this Court.

17. It is further submitted that in para 6 of the order dated 19.10.2016 passed by the Tribunal in S.A.No.231 of 2016, the Tribunal was not inclined to grant any interim order, as it did not find any lacunae or error on the part of the bank in issuing the sale notices under Rules 8(6) and 9(1) of the Security Interest Rules. It is argued that all these points have been raised before the Tribunal and they were considered, and therefore, there is no need to consider those aspects in this writ petition.

18. It is further argued by the learned counsel for the respondent bank that the third respondent is the auction purchaser to whom the bank has entrusted the possession of the property. It is submitted that after issuing the physical possession letter dated 02.11.2016, the petitioner has given a letter offering one time settlement of Rs.4.50 crores, having knowledge of the fact that the

property was already sold by the respondent bank in the auction. Therefore, it is argued that the said letter was not considered by the bank, as the property was sold by the bank and physical possession was also handed over to the successful bidder.

19. On consideration of the facts and circumstances of this case, we are of the considered view that the contentions raised by the petitioner in this writ petition have already been raised before the Tribunal, and before this Court in some of the writ petitions, as referred above. All the securitization appeals and writ petitions filed by the petitioner have been dismissed. The main challenge in this writ petition is only with regard to violation of order of the Tribunal dated 19.10.2016 passed in I.A.No.570 of 2016 in S.A.No.231 of 2016, wherein the Tribunal has directed the petitioner to pay Rs.25 lakhs on 20.10.2016. As a matter of fact, the e-auction was scheduled to be held on 20.10.2016 between 11.00 and 12.00 noon. No doubt, the petitioner had deposited the amount of Rs.25 lakhs on the said date at about 3.30 pm., i.e., after conducting the auction. The Tribunal also directed the petitioner to deposit Rs.75 lakhs within 10 days from the date of the said order, but the petitioner did not deposit that amount. Therefore, the e-auction was conducted and the third respondent became successful bidder and he has deposited 25% of the sale price on the date of auction i.e., on 20.10.2016 and the balance amount of 75% on 31.10.2016, and a sale certificate was issued by the Authorised Officer on 02.11.2016 by delivering the physical

possession of the property. In view of the fact that the petitioner has already approached the Tribunal and this Court several times in the above case, it has almost exhausted all the remedies available to it.

20. Therefore, we are of the considered opinion that there is no illegality in conducting the e-auction of the property by the respondent bank, and there are no merits in the writ petition.

21. In the result, the writ petition is dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

Date: 13.07.2017.
TJMR