

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No. 3782 of 2017

ORDER: (per SK, J)

This writ petition was filed assailing the Public Notice For Auction Cum Sale dated 16.12.2016 published in the newspapers by M/s Dewan Housing Finance Corporation Limited (DHFL), proposing to hold the auction sale on 17.01.2017 in respect of the secured asset being Flat No.5S, Second Floor in Raja Kishendas Enclave, MCH No.8-2-602/C, Road No.10, Lane No.3, Banjara Hills, Hyderabad.

2. The petitioner and her husband availed loan facilities from DHFL and offered the subject flat as security interest therefor. Default having occurred in the repayment of the loan, the respondent company issued a Demand Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). Thereafter, the respondent company seems to have proceeded to sell the secured asset under the impugned Public Notice for Auction Cum Sale dated 16.12.2016. The auction purchaser is impleaded as the third respondent in this writ petition. The ground of challenge in the writ petition is that the respondent company failed to follow the prescribed procedure in bringing the secured asset to sale.

3. Sri E. Madan Mohan Rao, learned counsel for the petitioner, would assert that no prior sale notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, was issued prior to publication of the sale notice in the newspapers under Rule 9(1) of the said Rules.

4. The Senior Manager of the respondent company filed an additional counter affidavit wherein he conceded that no notice was issued under Section 13(4) of the SARFAESI Act, and no sale notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, had been issued either to the petitioner or her husband.

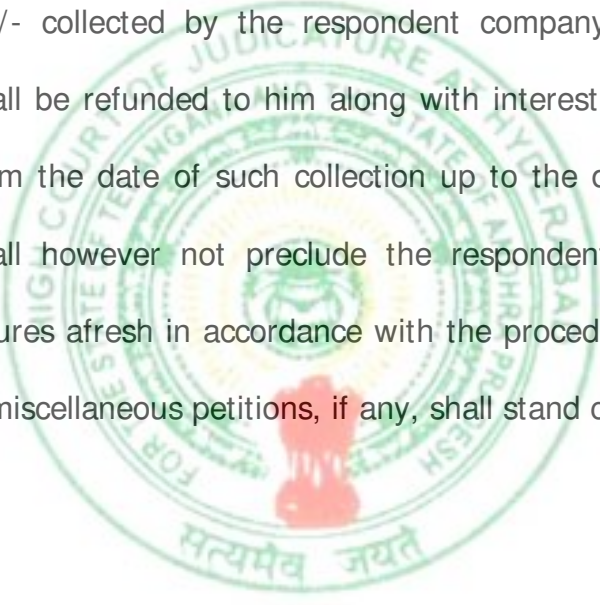
5. In that view of the matter, it is clear that there was a violation of the prescribed procedure by the respondent company in bringing the secured asset to sale. No circumstances are established warranting an inference being drawn that the petitioner waived this requirement. That being so, the sale in favour of the third respondent necessarily has to be set aside.

6. Sri Sharad Sanghi, learned counsel for the third respondent, submits that the third respondent also is desirous of backing out of the sale. He would point out that W.P.M.P.No.18902 of 2017 was filed by his client seeking return of the sale consideration of Rs.2,62,50,000/- along with interest thereon at the rate of 18% per annum.

6. Sri Kunchem Maheswara Rao, learned counsel for the respondent company, would fairly concede that in the light of the procedural violation by his client, the sale cannot be sustained. He would further submit that in terms of the policy of the respondent company, the interest payable to the third respondent from the refund of the sale consideration may be limited to 14% per annum.

7. We are however disinclined to accept this submission. Reference in this regard may be made to Mathew Varghese v. M. Amritha Kumar¹, wherein the Supreme Court, in similar circumstances, while setting aside an invalid sale made in favour of an auction purchaser, directed refund of the sale consideration to the auction purchaser along with interest at 18% per annum.

8. The writ petition is accordingly allowed setting aside the auction sale held on 17.01.2017 pursuant to the impugned Public Notice for Auction Cum Sale dated 16.12.2016. The sale consideration of Rs.2,62,50,000/- collected by the respondent company from the third respondent shall be refunded to him along with interest thereon at 18% per annum from the date of such collection up to the date of payment. This order shall however not preclude the respondent company from initiating measures afresh in accordance with the procedure laid down by law. Pending miscellaneous petitions, if any, shall stand closed. No costs.


SANJAY KUMAR, J

GUDI SEVA SHYAM PRASAD, J

06th July, 2017

KSM

¹ (2012) 5 SCC 610

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



WRIT PETITION No. 41189 of 2016

06th July, 2017

KSM