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

WRIT PETITION NO.17571 OF 2017

O R D E R

(*Per Hon'ble Sri Justice Sanjay Kumar*)

This writ petition was filed by M/s.Inventaa Chemicals Limited assailing the order dated 01.05.2017 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.27 of 2017 in S.A.No.265 of 2016. By the said order, the Tribunal, while issuing notice to the Bank of India, the first respondent therein, and to M/s.Inventaa Chemicals Limited, the second respondent therein, directed the Bank of India not to issue a sale certificate to M/s.Inventaa Chemicals Limited till 23.05.2017. The applicant in the said M.A., M/s.Manoharamma Hotel Investment Pvt. Ltd., the third respondent in this writ petition, was granted liberty to pay the outstanding amount to the bank by 23.05.2017.

The facts, to the extent relevant, are as under:

The Bank of India initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), against the third respondent herein consequent to its loan account being declared a non-performing asset. Aggrieved by the action initiated by the bank, the third respondent filed S.A.No.265 of 2016 before the Debts Recovery Tribunal at Visakhapatnam assailing the proceedings initiated by the bank under the SARFAESI Act and seeking a declaration that the e-auction sale notice dated 05.02.2016 issued by the bank proposing to auction the secured assets on 15.03.2016 was illegal and to set aside the same.

M/s.Inventaa Chemicals Limited emerged the successful bidder in the auction held on 15.03.2016 in so far as a vacant site of 2691.35 square yards at Rajahmundry was concerned. 25% of the bid amount was paid by it on the same day, i.e., 15.03.2016. The third respondent then filed W.P.No.8032 of 2016 before this Court seeking a declaration that the auction notice dated 05.02.2016 fixing the date of auction of the secured assets on 15.03.2016 was illegal. Interim orders were granted by this Court staying confirmation of the sale and issuance of the sale certificate to the auction purchaser. This writ petition was thereafter disposed of by this Court *vide* order dated 29.09.2016. Therein, this Court observed that in the absence of any serious dispute relating to its liability, the third respondent could not prevent the bank from realizing its debts by resorting to litigation again and again. This Court however directed continuance of the stay of confirmation of the sale granted earlier for a period of one month, within which time the third respondent was directed to deposit 25% of the outstanding liability along with interest and if such amount was paid, it was held entitled to seek appropriate interim orders from the Tribunal. This Court further observed that in the event the third respondent committed default in payment of such amount, the interim stay would automatically stand vacated and it would be barred from seeking any interim relief from the Tribunal. M/s.Inventaa Chemicals Limited was then left free to file an application before the Tribunal for appropriate orders.

The third respondent admittedly failed to abide by this order.

The Tribunal at Visakhapatnam thereafter took up S.A.No.265 of 2016 for adjudication and dismissed the same *vide* order dated 26.04.2017. Therein, the Tribunal recorded the sequence of events from the start. Challenge in the said S.A., as stated *supra*, was to the action of the bank in issuing the e-auction sale notice dated 05.02.2016 proposing to auction the secured assets on 15.03.2016 on the ground that the same was not in accordance with the provisions of the SARFAESI Act. The Tribunal adverted to the fact that after issuance of the demand notice under Section 13(2) of the SARFAESI Act on 02.04.2014 and the possession notice under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') on 10.06.2014, e-auction sale notice dated 08.11.2014 was issued by the bank proposing to hold the auction of the secured assets on 15.12.2014. The third respondent thereupon filed S.A.No.303 of 2014 before the Tribunal and obtained a conditional stay order. The condition was complied with but with a delay of two days. The bank accordingly conducted the auction on 21.02.2015 and the Tribunal dismissed S.A.No.303 of 2014 on 30.09.2015. Aggrieved thereby, the third respondent filed W.P.No.34051 of 2015 before this Court. Interim orders were granted therein on 13.10.2015 directing the bank not to issue the sale certificate to the auction purchaser. Thereafter, the auction purchaser withdrew from the transaction and the bank was constrained to issue a fresh auction sale notice on 05.02.2016. It was against this notice that the third respondent also filed W.P.No.8032 of 2016. Upon examination of the merits of the case, the Tribunal opined that the bank had scrupulously followed the procedure prescribed in the SARFAESI Act and the Rules framed thereunder. It also took note of the fact that the sale was conducted on 15.03.2016 and M/s.Inventaa Chemicals Limited emerged as the successful bidder, but issuance of the sale certificate in its favour was stayed by the High Court. As the third respondent failed to abide by the condition imposed by this Court in the final order and as the Tribunal found no *bonafides* in the application filed by it, the Tribunal dismissed the S.A. This order of dismissal admittedly attained finality as the third respondent did not choose to challenge the same.

Strangely, the third respondent then adopted the novel method of filing a miscellaneous application in the dismissed S.A. This application was filed purportedly under Section 13(8) of the SARFAESI Act read with Order 19 Rule 1 CPC. In the affidavit filed in support of this miscellaneous application, the third respondent stated that after dismissal of the S.A. on 26.04.2017, the bank was making hectic efforts to issue the sale certificate to M/s.Inventaa Chemicals Limited and claimed that it was intending to pay the entire amount due to the bank so as to redeem the secured asset under Section 13(8) of the SARFAESI Act. The bank was stated to have issued letter dated 28.04.2017 informing it of the total outstandings. The third respondent further stated that it had approached the bank to pay the outstanding amount so as to redeem the secured asset but the bank had not allowed it to pay the same only with intent to issue the sale certificate to the auction purchaser. Claiming entitlement to redeem the secured asset before the sale transaction was completed, the third respondent sought a direction to permit it to redeem the secured asset by paying the due amount within one month and sought a direction to the bank, upon receipt of the said amount, to release its title document. It was upon this application that the Tribunal passed the order dated 01.05.2017, which is presently under challenge.

Heard Sri T.Rajendra Prasad, learned counsel for M/s.Inventaa Chemicals Limited, the petitioner, Smt.T.Vidya Rani, learned panel counsel for Bank of India, and Sri S.Sriram, learned counsel for M/s.Manoharamma Hotel Investment Pvt. Ltd., the third respondent.

Though copious arguments were advanced by Sri S.Sriram, learned counsel, upon the statutory right of a borrower to redeem the secured asset under Section 13(8) of the SARFAESI Act prior to completion of its 'transfer', we are of the opinion that the first issue which requires to be addressed is whether the miscellaneous application filed by the third respondent was maintainable at all.

S.A.No.265 of 2016 filed by the third respondent under Section 17 of the SARFAESI Act stood dismissed by order dated 26.04.2017. This order admittedly attained finality. Once the Tribunal affixed its seal of approval upon the action of the bank in bringing the secured asset to sale in the context of the challenge laid by the third respondent to the auction notice and the sale conducted pursuant thereto on the limited ground that the due procedure was not followed, the Tribunal became *functus officio* in so far as the said application was concerned. No power of review vests in the Tribunal in terms of the statutory scheme. Therefore, if the third respondent wanted to thereafter assert its statutory right of redemption under Section 13(8) of the SARFAESI Act, it had to file a separate application under Section 17. Admittedly, this was not the procedure adopted by the third respondent. Be it noted that a separate procedure is prescribed under Rules 12 and 13 of the Rules of 2002 for filing an application under Section 17. Admittedly, neither was the procedure followed nor was the required fee paid to maintain such an application. The miscellaneous application filed in the dismissed S.A.

was therefore not maintainable before the Tribunal. Losing sight of this fact, the Tribunal not only took on file the said miscellaneous application but also passed an order therein staying issuance of the sale certificate till 23.05.2017. The liberty granted thereunder, however, was that the third respondent should clear its outstanding dues by the said date. It is an admitted fact that the third respondent failed to do so and it was only on 08.06.2017 that it paid its outstanding dues. It is on the strength of this belated payment that the third now asserts its right of redemption.

Reference in this regard would necessarily have to be made to the statutory scheme of the SARFAESI Act and the Rules framed thereunder, as it stood at that point of time. Section 13 deals with enforcement of the security interest by the secured creditor and provides that any secured interest created in favour of such secured creditor may be enforced without intervention of the Court or Tribunal by such creditor in accordance with the provisions of the Act. This power overrides Sections 69 and 69A of the Transfer of Property Act, 1882. After following the procedure prescribed, a secured creditor is empowered to sell the secured asset for recovering the secured debt under Section 13(4)(a). Section 13(6) provides that transfer of the secured asset by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. Rules 8 and 9 of the Rules of 2002 detail the procedure to be followed when immovable secured assets are brought to such sale. After following the procedure set out in Rules 8(5) and 8(6), a secured creditor is required to publish or serve the notice of sale under Rule 9(1). Rule 9(2) provides that 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 authorized officer and the same shall be subject to confirmation by the secured creditor. On sale of the immovable asset, the purchaser is required under Rule 9(3) to deposit 25% of the amount of the sale price immediately, i.e., on the same day. The balance amount of the sale price is to be paid by the purchaser to the authorized officer on or before the 15th day of confirmation of sale of the immovable property as per Rule 9(4). This period may however be extended, as agreed upon in writing between the parties. In the event of default of payment within the period mentioned in sub-rule (4) of Rule 9, the deposit made by the purchaser shall be forfeited whereupon the property would be resold in terms of Rule 9(5) and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold. As per Rule 9(6), upon confirmation of sale by the secured creditor and if the terms of payment are duly complied with, the authorized officer is to issue a certificate of sale of the immovable property in favour of the purchaser.

The scheme of the SARFAESI Act and the Rules framed thereunder is designed to assist the secured creditor to realize its debts without going through the cumbersome legal process involved in approaching a Court or Tribunal. The sale transaction is therefore to be completed expeditiously and the Act and Rules were engineered with this object in mind. No doubt, the principal borrower or the guarantor, as the case may be, is given the right of redeeming the secured asset under Section 13(8) of the SARFAESI Act and this provision, prior to its amendment with effect from September, 2016, was to the effect that such principal borrower or guarantor, as the case may be, can tender the dues of the secured creditor together with all costs, charges and expenses at any time before the date fixed for the 'sale' or 'transfer' and thereupon, the secured asset shall not be 'sold' or 'transferred' by the secured creditor and no further steps shall be taken by him for 'transfer' or 'sale' of that secured asset. This right therefore enures to the benefit of the principal borrower or the guarantor, as the case may be, up to the date of the 'sale' or the date of the 'transfer' of the secured asset. Needless to state, these are two separate and distinct events as the 'sale' takes place on the date of auction fixed in terms of the notice under Rules 8(6) and 9(1) of the Rules of 2002 but the 'transfer' only takes place upon completion of the formalities thereafter and upon execution of the sale certificate in accordance with the due procedure laid down by law.

In the present case, the sale admittedly took place on 15.03.2016 and M/s.Inventaa Chemicals Limited immediately paid 25% of the bid amount on the said day. However, as the third respondent approached this Court by way of W.P.No.8032 of 2016 and stalled further proceedings, the bank could not confirm the sale, whereupon M/s.Inventaa Chemicals Limited would have had to pay the balance sale consideration. It was only after the failure on the part of the third respondent to abide by the final order dated 29.09.2016 in W.P.No.8032 of 2016 and after dismissal of S.A.No.265 of 2016 on 26.04.2017 that the bank confirmed the sale and advised M/s.Inventaa Chemicals Limited to pay the remaining sale consideration. The said amount was thereupon deposited by M/s.Inventaa Chemicals Limited on 03.05.2017. However, by virtue of the order secured by the third respondent in M.A.No.27 of 2017 in S.A.No.265 of 2016 on 01.05.2017, the bank could not issue the sale certificate to M/s.Inventaa Chemicals Limited despite completion of all the required formalities. Significantly, the Tribunal granted time to the third respondent only till 23.05.2017 to pay its outstanding dues so as to allow it to exercise the purported right to redemption. The third respondent however failed to abide even by this order. In effect, the stay granted by the Tribunal with regard to execution of the sale certificate expired on 24.05.2017 but despite the same, for some strange reason, the bank did not choose to take further action. It was only thereafter, that is, on 08.06.2017, that the third respondent paid the amounts due to the bank.

The aforestated sequence of events clearly demonstrates that in the context of the auction sale which was successfully held as long back as on 15.03.2016, the third respondent was given the right to exercise its right of redemption under Section 13(8) of the SARFAESI Act up to 23.05.2017, be it in accordance with law or otherwise. Notwithstanding the same, it failed to make use of this opportunity and admittedly made the payment on 08.06.2017, after expiry of the time stipulated. The statutory right of redemption under Section 13(8), even if the order passed in favour of the third respondent by the Tribunal is given any credence, was stretched way beyond the statutory intendment but despite the same, the third respondent failed to make use of it.

Therefore, on both counts, we have to find against the third respondent. To begin with, the right of redemption provided to it under Section 13(8) was sought to be exercised by it by stretching the statutory intendment thereunder way beyond permissible limits but even by doing so, the third respondent failed to abide by the time stipulations fixed by this Court or by the Tribunal. That apart, the very application filed by it in M.A.No.27 of 2017 in the dismissed S.A.No.265 of 2016 was not maintainable. The third respondent was therefore liable to be non-suited by the Tribunal and the order dated 01.05.2017 passed by it in M.A.No.27 of 2017 in S.A.No.265 of 2016, overlooking these aspects, cannot be sustained.

The writ petition is accordingly allowed setting aside the order dated 01.05.2017 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.27 of 2017 in S.A.No.265 of 2016. The bank shall forthwith take necessary further steps pursuant to the sale held in favour of the writ petitioner, M/s.Inventaa Chemicals Limited, and complete the sale transaction by executing and registering a sale certificate in accordance with the due procedure expeditiously and in any event, not later than two weeks from the date of receipt of a copy of this order. The bank shall also take necessary steps to transfer possession of the secured asset purchased by the writ petitioner free from encumbrances, as contemplated under the rules. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

4th AUGUST, 2017

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