

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 46776 of 2016

ORDER: (*Per VRS,J*)

Challenging an auction notice issued by the 3rd respondent-Bank for the sale of a pledged property, the borrower has come up with the present writ petition.

2. Heard Mr. K.B. Ramanna Dora, learned counsel for the petitioner, and Mr. Ambadipudi Satyanarayana, learned standing counsel for Punjab National Bank, appearing for the 3rd respondent.

3. The auction notice is not issued under the SARFAESI Act, 2002. Therefore, the petitioner cannot go before the Tribunal.

4. The main ground, on which the auction notice is challenged, is that the same was published on 23.12.2016, fixing the date of auction as 09.01.2017, and that even the upset price has not been fixed.

5. It is true, as rightly contended by the learned standing counsel for the 3rd respondent-Bank, that Rule 8 (6) of the Security Interest (enforcement) Rules, 2002 may not strictly apply to a pledged property. But, the method of bringing a pledged property is stipulated in Section 176 of the Indian Contract Act, 1872, which reads as follows:

“Pawnee’s right where pawnor makes default – If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.”

6. Therefore, it is clear that the pawnee has an obligation to serve a reasonable notice of the sale. What is reasonable notice is not indicated in the Contract Act. Therefore, we may have to test each notice, on the basis of the contents of the notice and arrive at an objective satisfaction as to whether the contents of the notice provide a reasonable notice or not.

7. It is not necessary that a clear notice of 30 days should be served, as in the case of immovable properties. Movable properties stand on a different footing and a notice of a duration of 15 days, which the Bank has given in the case on hand, may be adequate.

8. But unfortunately, the 3rd respondent-Bank has not indicated the reserve price in the notice. The Bank has indicated in the notice that the price will depend upon the market rate of the Tobacco as on that date. This uncertainty will certainly make the auction sale, subject to the vagaries of the bidders who participate. Therefore, the Bank has

to arrive at some logical price and fix it as the upset price. If on the date of auction, the market rate is higher than the upset price, the Bank can always ensure that the bidders shall offer at least an amount equivalent to the market rate. Otherwise, the whole thing will turn out to be an exercise in vagueness.

9. In view of the above, the present auction notice is liable to be set aside. Accordingly, the Writ Petition is allowed and the auction notice is set aside. It will be open to the 3rd respondent-Bank to issue a fresh notice, giving a clear duration of at least 15 days from the date of publication of the notice to the date of auction. The Bank may fix an upset price, calculating the trend exhibited by the market with regard to the rate, and arrive at a fair reasonable amount. On the basis of such an upset price, the Bank may proceed to conduct the auction.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

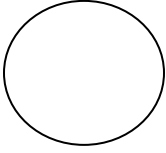
V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

4th January, 2017

Note: Issue C.C. by 05.01.2017.

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(allowed)

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