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

WRIT PETITION No.21624 of 2016

ORDER: (per SK,J)

This writ petition was filed assailing the action of the Bank of India in conducting an auction in respect of the property offered by the petitioners as a security interest and in issuing the registered sale certificate dated 21.11.2015 in favour of the auction purchaser, the third respondent. The challenge is based on the ground that the respondent bank did not adhere to the procedure prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

Sri G.U.R.C.Prasad, learned counsel for the petitioners, would contend that the bank did not serve upon the petitioners a copy of the demand notice dated 29.08.2009 issued by the bank under Section 13(2) of the SARFAESI Act. This is countered by the respondent bank by relying upon the available record which indicates that the said demand notice was communicated to the petitioners by way of registered post with acknowledgment due.

Smt.T.Vidya Rani, learned counsel for the respondent bank, would state that though an acknowledgment is available, it is not legible and therefore, the same has not been filed.

Though non-compliance with Section 13(2) of the SARFAESI Act read with Rule 3 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), would ordinarily have serious consequences, we are constrained to take note of the fact that the respondent bank initiated measures under Section 13(4) of the SARFAESI Act in the year 2011 and the petitioners admit receipt of such proceedings. Having received the said proceedings, there is no explanation forthcoming as to why the petitioners did not allege irregularities in following the prescribed procedure at the earlier point of time.

As matters stand, the respondent bank has already proceeded further in the matter and has sold the property in accordance with the procedure prescribed under the SARFAESI Act. The sale has also crystallised in the form of a registered sale certificate in favour of the third respondent.

Sri G.U.R.C.Prasad, learned counsel, would lastly contend that as the respondent bank chose to take recourse to the ordinary civil remedy of filing a suit in O.S.No.289 of 2012 before the learned Principal Senior Civil Judge, Srikakulam, it ought not to have taken recourse to proceedings under the SARFAESI Act. He would further contend that the sale notice dated 11.09.2015 issued by the respondent bank under Rule 8(6) of the Rules of 2002 would indicate that the bank fell back on the decree obtained by it in the said suit and therefore, the procedure followed is irregular.

No doubt, the bank, having initiated proceedings under the SARFAESI Act, need not have taken recourse to the decree obtained by it in the suit to justify its proceedings under the SARFAESI Act. However, mere mention of the said decree in the notice would not invalidate the sale and would have to be treated as mere surplusage. Viewed from any angle, we find no reason to interfere with the action taken by the respondent bank at this late stage.

The writ petition is therefore dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE GUDISEVA SHYAM PRASAD

Date:06.07.2017

GJ