

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.605 OF 2018

ORDER

(Per Sri Justice Sanjay Kumar)

This case arises under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for short*, 'the SARFAESI Act'). Bindu Transmissions Private Limited, the third respondent, availed working capital facilities to the tune of Rs.1,50,00,000/- from the State Bank of Hyderabad, presently, the State Bank of India (*hereinafter*, 'the bank'). K.Srilatha Reddy, the petitioner herein, stood as a guarantor for the said loan and mortgaged her house property bearing No.94/HIG-A, Sy.No.108, Gachibowli Housing Board Colony, Phase-IV, Gachibowli, Hyderabad. The loan came to be classified as a non-performing asset on 11.01.2016 and the bank initiated recovery proceedings under the SARFAESI Act. Demand notice dated 18.01.2016 was issued under Section 13(2) thereof to the petitioner and other guarantors, quantifying the dues payable towards the loan account at Rs.1,57,10,101/- as on 17.01.2016 along with future interest, incidental expenses, costs, charges, etc. Possession notice was issued by the bank 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 03.05.2016. Notice under Rule 8(6) of the Rules of 2002 was issued by the bank on 13.05.2016 and e-auction sale notice under Rule 9(1) of the Rules of 2002 was published in newspapers on 25.06.2016, fixing the date of auction sale as 01.08.2016.

On 18.07.2016, the third respondent company along with the petitioner and another guarantor filed S.A.No.482 of 2016 before the Debts Recovery Tribunal, Hyderabad, under Section 17(1) of the SARFAESI Act, aggrieved by

the measures initiated by the bank. However, as no interim orders were passed therein, the bank conducted the auction sale, as scheduled, on 01.08.2016. C.Anji Reddy, the second respondent, emerged the highest bidder for the secured house property of the petitioner at Rs.1,40,96,000/-. Sale certificate dated 01.03.2017 was also issued to him.

While so, by Docket Order dated 23.10.2017 passed in S.A.No.482 of 2016, the Tribunal directed the bank not to register the sale certificate in relation to this property till 03.11.2017. At that stage, I.A.s. were filed by the petitioner and others in the S.A. seeking further interim relief. I.A.No.2582 of 2017 was filed by them seeking a direction to the bank to accept the amounts and redeem the S.A. schedule property, which had already been put to sale on 01.08.2016. I.A.No.2583 of 2017 was filed by them seeking permission to deposit the entire e-auction sale amount, including the expenses and costs incurred by the bank, before the Tribunal for redemption of the said property. I.A.No.2679 of 2017 was filed by them seeking stay of all further proceedings till the disposal of the S.A., as they were ready to redeem the S.A. schedule property.

By common Docket Order dated 18.12.2017, the Tribunal took into account the amended provisions of Section 13(8) of the SARFAESI Act and opined that the right of redemption thereunder was not available to the applicants after publication of the auction sale notice. However, in order to give them an opportunity to show their *bonafides* and in the interest of justice, the Tribunal stayed all further proceedings pursuant to the auction sale held on 01.08.2016, including registration of the sale certificate, subject to the applicants depositing the highest bid amount of Rs.1,41,00,000/- paid by the auction purchaser in a no lien account within one week from the date of the order. The bank was directed to hold the same till the disposal of the S.A. The

Tribunal added a default clause that in the event of failure on the part of the applicants to abide by the condition, the bank would be at liberty to proceed further in accordance with law.

Aggrieved by the finding of the Tribunal that the right of redemption under Section 13(8) of the SARFAESI Act was not available to her after publication of the sale notice and the condition imposed requiring her to deposit the bid amount within one week, the petitioner filed this writ petition. In the affidavit filed in support of the case, she pointed out that the e-auction notice dated 25.06.2016 contained a specific clause (Condition No.16), whereby the bank undertook to cancel the sale in the event the borrower paid the loan amount before registration of the sale certificate, and stated that in the light of this condition, subject to which the auction sale had been conducted, her right of redemption stood protected. She further pointed out that there was no clarity in the Docket Order dated 18.12.2017 passed by the Tribunal as to what would happen to her house property even if she deposited the amount with the bank as directed and sought extension of time to comply with this condition.

By order dated 05.01.2018, this Court granted interim stay of registration of the sale certificate and dispossession of the petitioner from the subject property pending further orders, taking note of the fact that the Tribunal had extended to her the benefit of the right of redemption.

The Chief Manager of the bank at its Asset Recovery Management Branch, Chikkadapally, Hyderabad, filed a counter-affidavit in March, 2018. Therein, he stated that the writ petition was not maintainable as an effective appellate remedy was provided to the petitioner under Section 18 of the SARFAESI Act. On facts, he stated that the bank had sanctioned working capital facilities of Rs.1,50,00,000/- to the third respondent company during

the year 2013 and that the husband of the petitioner was the Managing Director of the said company. The petitioner along with other guarantors created security interest in their own properties by way of equitable mortgages. The loan account of the third respondent company was classified as a non-performing asset on 11.01.2016 leading to initiation of recovery proceedings under the SARFAESI Act. The recovery proceedings culminated in the issuance of notice under Rule 8(6) of the Rules of 2002 on 13.05.2016 followed by an e-auction sale notice dated 25.06.2016 under Rule 9(1) of the said Rules, notifying the date of sale of the three secured assets as 01.08.2016. The second respondent emerged the highest bidder in the said auction in so far as the petitioner's mortgaged house property was concerned, at a bid of Rs.1,40,96,000/-. He paid the initial 25% of the bid amount on the same day. Out of the balance sale consideration, a sum of Rs.1,04,76,077/- was paid by him on 06.08.2016 and a sum of Rs.90,599/- was paid on 10.08.2016. The sale certificate was issued to him on 01.03.2017. However, it was not registered as the Tribunal passed an order on 23.10.2017 interdicting the bank from doing so. The Chief Manager stated that the petitioner had sufficient time to redeem her property had she chosen to do so and asserted that her complaint that sufficient time was not granted by the Tribunal to deposit the bid amount was not tenable.

By order dated 12.06.2018, taking note of the submissions made on behalf of the parties, this Court directed the petitioner to approach the bank immediately to ascertain the total amount to be deposited by her and to do so within one week. The bank was directed to give credit to the amounts already paid by the petitioner while computing the total outstanding dues payable and also indicate to her the interest component at the rate of 7% per annum payable to the second respondent on the sale consideration amount deposited

by him. The bank was further directed to refund the sale consideration paid by the second respondent along with interest thereon at 7% thereon upon payment being made by the petitioner. The matter was adjourned to 22.06.2018 to report compliance.

On 22.06.2018, the petitioner filed I.A.No.3 of 2018 seeking a direction to the bank to intimate to her the amount payable forthwith so as to enable her to do so. In the affidavit filed in support thereof, she stated that on 12.06.2018, she approached the Assistant General Manager/ Authorized Officer of the bank at its Asset Recovery Management Branch, Chikkadapally, Hyderabad, and submitted a letter requesting information as to the amount that she had to pay in terms of the order dated 12.06.2018 passed by this Court. She stated that she again requested the bank for this information on 19.06.2018, duly furnishing a copy of the order passed by this Court. However, the bank did not comply but in the meanwhile, she deposited Rs.50,00,000/- by way of a cheque on 21.06.2018. She further stated that she had paid Rs.10,21,198/- under a one-time settlement (OTS) scheme and that the bid amount of the auction purchaser along with 7% interest thereon would come to Rs.1,59,09,500/-. Deducting the amount of Rs.50,00,000/- already paid by her, she stated that she was ready to pay the balance immediately. She claimed that she was ready and willing to comply with the direction of this Court but only due to non-cooperation of the bank, she could not do so. She prayed for a direction to the bank to intimate to her the amount payable by her forthwith, so that she could make the payment within twenty four hours. Copies of her representations dated 12.06.2018 and 19.06.2018 were also filed.

Thereupon, the Chief Manager of the bank at its Asset Recovery Management Branch, Chikkadapally, Hyderabad, filed affidavit dated

28.06.2018 stating that after this Court passed the order on 12.06.2018, the matter was examined in the context of closure of the loan account by way of a OTS in terms of the letter dated 31.01.2018 issued by the bank and it was noticed that a sum of Rs.9,90,140/- was paid by the petitioner on 31.03.2018, as stipulated by the bank. The Chief Manager stated that this figure of Rs.9,90,140/- was arrived at after adjusting the bid amount of Rs.1,40,96,000/- offered by the second respondent. Further, in terms of the order dated 12.06.2018, the petitioner had to remit the said bid amount along with interest thereon at 7%. This came to Rs.1,59,82,933/- as on 30.06.2018. He further stated that the petitioner had deposited Rs.50,00,000/- after the order dated 12.06.2018 was passed and the same was kept in a no lien account, awaiting further orders from this Court. Similarly, the sum of Rs.9,90,140/- paid by the petitioner on 31.03.2018 was also kept in a no lien account. He pointed out that the securitization application filed by the petitioner was still pending disposal and had not been withdrawn in terms of the OTS letter dated 31.01.2018.

Perusal of the letter dated 31.01.2018 addressed by the bank to the third respondent company, in relation to the OTS offered to it, discloses that the bank acknowledged receipt of Rs.1,03,000/- thereunder towards 10% of the settled/agreed amount under the RINN SAMADHAN-II Scheme (OTS Amount: Rs.10,21,198/-). The OTS was therefore in relation to the balance dues that remained outstanding after adjusting the bid amount paid by the second respondent. The bank stated that the remaining 90%, being a sum of Rs.9,18,198/-, was due on or before 31.03.2018 (without interest) or on or before 31.05.2018 (with 9% interest). The bank further stated that approval for the OTS would be subject to withdrawal of all cases filed by the company against the bank in any Court/Tribunal/Forum.

The second respondent filed a counter stating as follows: He had participated in the auction held by the bank on 01.08.2016 and was declared the highest bidder for the petitioner's property at Rs.1,40,96,000/-. Pursuant thereto, the sale certificate was also issued to him on 01.03.2017. He pointed out that if the petitioner was aggrieved by the order dated 18.12.2017, she had a right to appeal to the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act and that this writ petition was not maintainable. He further stated that he had sold some other property to purchase this secured asset but the Income-Tax authorities denied his claim under Section 54(f) of the Income Tax Act, 1961 on the ground that there was no documentary evidence to show that he had purchased the secured asset and held the entire capital gains, arising out of the sale of his other property, liable to tax. He concluded by stating that the order passed by the Tribunal was a discretionary one and the petitioner had not made out any case for interference therewith.

The assessment order dated 20.12.2016 passed by the Deputy Commissioner of Income Tax, Circle-II(1), Hyderabad, for the assessment year 2014-15, however discloses that disallowance of the second respondent's claim was not on the ground of non-production of the document but because the purchase was beyond the time stipulated in the provision. Be that as it may.

When the matter was thereafter taken up for hearing, this Court found that there was no possibility of any settlement amongst the parties as the auction purchaser was not willing to settle for the amount in terms of the order dated 12.06.2018 passed by this Court. Arguments on the merits of the matter were thereupon advanced by Sri R.Raghunandan, learned senior counsel representing Sri T.Bala Mohan Reddy, learned counsel for the petitioner; Sri O.Manohar Reddy, learned counsel appearing for Smt.Vanga

Anita, learned counsel for the second respondent-auction purchaser; and Sri M.Srikanth Reddy, learned counsel for the bank.

At the outset, it may be noted that refusal by this Court to entertain a writ petition on the ground that an alternative remedy is available is in exercise of self-imposed restraint. No hard and fast rule applies in this regard and it would ultimately depend upon the individual facts of the case as to whether this Court would choose to do so or not. The case on hand, given the facts and the manifest error committed by the Tribunal set out hereinafter, beseeches exercise of the extraordinary jurisdiction vesting in this Court under Article 226 of the Constitution, so that the dispute can be given a quietus. We are therefore not persuaded to relegate the petitioner to the statutory remedy of appeal.

The Tribunal patently erred in relying upon the amended provisions of Section 13(8) of the SARFAESI Act. The amendment to this provision was effected by Act No.44 of 2016 with effect from 01.09.2016, where as the auction sale in the case on hand took place on 01.08.2016. The amendment was not with retrospective effect, as is clear from Act No.44 of 2016. Therefore, the amended provision would apply only to proceedings initiated after 01.09.2016 and not to proceedings already pending. Such pending proceedings would invariably be governed by the un-amended provisions of Section 13(8) of the SARFAESI Act. Section 13(8) of the SARFAESI Act, prior to its amendment, read as under:

‘13(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.’

In effect, Section 13(8) of the SARFAESI Act, as it stood at the relevant point of time, provided that the right of a borrower to redeem the secured

asset remains alive till the 'actual transfer or sale' of that secured asset. As a sale would not be complete in the eye of law until registration of the sale under the provisions of the Registration Act, 1908, the right of redemption would remain alive till that date. The observation of the Supreme Court in DWARIKA PRASAD V/ s. STATE OF UTTAR PRADESH¹ that the right of redemption in such cases stands extinguished only upon execution of the registered sale deed affirms this principle. The Supreme Court pointed out therein that this was the view expressed in MATHEW VARGHESE V/ s. M.AMRITHA KUMAR². Therefore, the petitioner's right to redeem her secured asset remains alive even as on date despite issuance of the sale certificate dated 01.03.2017, as it has not been registered. In this regard, it may also be noted that the bank, in its own wisdom, included Condition No.16 in the 'Terms and Conditions of Sale' appended to the e-auction sale notice dated 25.06.2016, which reads as follows:

'16. Before actual registration of the Sale Certificate in favour of the highest bidder, if the borrower discharges the debt due to the Bank (including all expenses incurred by the Bank), the auction will be cancelled and the money deposited by the highest bidder in pursuance of the auction will be refunded.'

The aforesaid condition essentially reiterates the principle incorporated in the un-amended Section 13(8) of the SARFAESI Act.

It may be noted that the auction sale of the subject property was held on 01.08.2016 pursuant to the e-auction sale notice dated 25.06.2016 but the pleadings on record do not manifest as to when confirmation of the sale was communicated to the second respondent, in terms of Rule 9(4) of the Rules of 2002, calling upon him to pay the balance sale consideration. Sri M.Srikanth Reddy, learned counsel, was asked to clarify this aspect and he produced letter dated 01.08.2016 addressed by the Authorized Officer of the bank to the

¹ (2018) 5 SCC 491 = 2018 SCC OnLine SC 183

² (2014) 5 SCC 610

second respondent, confirming that an amount of Rs.35,29,324/- was received from him towards 25% of the bid amount and calling upon him to pay Rs.1,05,66,676/-, the remaining 75% of the bid amount, within fifteen days, i.e., before 15.08.2016. He further stated that in case of non-payment of the balance amount before the due date, the 25% of the bid amount which was already deposited would be forfeited.

Significantly, the auction sale itself took place on 01.08.2016 between 11.00 AM and 12.00 Noon. As per Rule 9(2) of the Rules of 2002, the auction sale has to be confirmed in favour of the purchaser who offered the highest sale price in his bid to the Authorized Officer and the same shall be subject to confirmation by the secured creditor. Confirmation by the secured creditor is therefore a condition precedent before the confirmation letter is issued to the auction purchaser under Rule 9(4) of the Rules of 2002 requiring him to pay the balance sale consideration within fifteen days. In the case on hand, there is no evidence of the bank having confirmed the auction sale held on 01.08.2016 and it appears that the Authorized Officer straightaway issued the letter dated 01.08.2016, without awaiting such confirmation, calling upon the second respondent to pay the balance sale consideration. It is not in dispute that the second respondent did so within the time stipulated and he was issued the sale certificate on 01.03.2017.

Admittedly, there were no orders, be it from this Court or from the Tribunal, restraining the bank from concluding the sale transaction at that stage. However, for reasons best known to it, the bank did not choose to do so. It may be noted that the sale certificate was issued by the bank to the second respondent on 01.03.2017 and the order interdicting it from registering the same was passed by the Tribunal only on 23.10.2017. There is no explanation forthcoming as to why the bank did not register the sale certificate

in the interregnum. Sri M.Srikanth Reddy, learned counsel, would state that it was for the second respondent to come forward and seek such registration and that the bank cannot be blamed for the delay. However, perusal of Rule 9(6) of the Rules of 2002 demonstrates that upon confirmation of the sale by the secured creditor and if the terms of the payment have been complied with, it is the Authorized Officer who is required to issue the certificate of sale of the immovable property in favour of the purchaser. Therefore, the responsibility to complete the sale transaction, in terms of the Rules of 2002, rests upon the Authorized Officer. It may also be noted that the Authorized Officer of the bank himself addressed letter dated 29.12.2016 to the second respondent acknowledging receipt of the total sale consideration and informing him that the bank had filed Memo dated 13.12.2016 in S.A.No.482 of 2016 before the Tribunal stating so and that the same was recorded. He further stated that as the entire bid amount was received, the sale was confirmed and that the sale certificate would be issued with due registration. It is therefore clear that even at that stage, the Authorized Officer took upon himself the responsibility of getting the sale certificate registered. However, he never called upon the second respondent to make necessary arrangements for payment of the registration charges/stamp duty so as to proceed with the registration of the sale certificate issued on 01.03.2017.

That being said, in so far as the bank is concerned, the petitioner's conduct has also not been without lapses. Having approached this Court complaining that sufficient time was not given to her to deposit the highest bid amount paid by the second respondent, she did not choose to pay the amount even thereafter. After this Court passed the order dated 12.06.2018 requiring her to approach the bank to ascertain the total amount to be deposited by her, she claimed that she did so but the bank did not cooperate and furnish the

figure. However, on the date that she was required to report compliance, i.e., on 22.06.2018, she filed I.A.No.3 of 2018 seeking a direction to the bank to furnish the details. Surprisingly, in the affidavit filed in support of the said I.A., she herself quantified the amount that would be due and payable by her, which almost tallies with the final figure now arrived at. Having resorted to such quantification, she did not explain as to why she failed to deposit the said amount in its entirety and only limited her first deposit to Rs.50,00,000/-. No liberty was granted by this Court to take recourse to such a measure. It may also be noted that though the sale took place on 01.08.2016, the petitioner filed the subject I.A.s. before the Tribunal seeking to exercise her right of redemption only in October, 2017, long after issuance of the sale certificate dated 01.03.2017 in favour of the second respondent. Her delay in seeking to exercise her right of redemption under Section 13(8) of the SARFAESI Act, coupled with the unexplained reticence on the part of the bank in taking steps to register the sale certificate dated 01.03.2017, clearly demonstrates that neither of them can seek absolution.

Surprisingly, even the second respondent, despite depositing the entire sale consideration by 10th August, 2016 itself and having received the sale certificate on 01.03.2017, did not choose to address the bank seeking registration thereof, though there was no order of stay of such registration till 23.10.2017. Having allowed the right of redemption available to the petitioner under Section 13(8) of the SARFAESI Act to remain alive due to his own inaction in this regard, the second respondent can have no complaint when the petitioner seeks to exercise such right at this late stage, as the said right of redemption is extant even now as the sale certificate dated 01.03.2017 is not registered. It is relevant to note that by letter dated 02.07.2018, the bank recorded that after her deposit of the sum of Rs.50,00,000/- on 21.06.2018,

the petitioner paid a sum of Rs.1,03,66,571/- on 29.06.2018 and a further sum of Rs.6,13,363/- on 02.07.2018, aggregating to Rs.1,59,82,934/-. The petitioner has therefore paid the total amount due in terms of the order dated 12.06.2018 passed by this Court, apart from the balance dues that still remained outstanding, by way of the OTS offered under the bank's letter dated 31.01.2018.

On the above analysis, this Court holds that the petitioner's right of redemption under Section 13(8) of the SARFAESI Act can still be exercised, notwithstanding issuance of the sale certificate dated 01.03.2017 and payment of the full sale consideration by the second respondent. However, as the second respondent was made to part with his monies as long back as in August, 2016 and has nothing to show for the same at this stage, he is entitled to be recompensed by payment of adequate returns in the form of interest on the sale consideration paid by him.

A comparative analysis of the lapses on the part of the respective parties puts the second respondent in the most favourable light, as opposed to the others. The bank itself seems to be most at fault for not completing the sale transaction by registering the sale certificate dated 01.03.2017 though there was no order of stay in relation thereto till 23.10.2017. It may also be kept in mind that the bank appropriated the sale consideration paid by the second respondent as long back as in August, 2016 and had the benefit thereof, notwithstanding the fact that it did not register the sale certificate issued to him on 01.03.2017. The petitioner is also not free of fault, as already pointed out *supra*, and has already paid 7% interest on the bid amount paid by the second respondent as directed by this Court. Given the circumstances of the case, as the second respondent would have to be shown the door as the petitioner's right of redemption stands protected and we have already held

that his only returns can be by way of interest upon his monies, the rate of interest of 18% per annum adopted by the Supreme Court in MATHEW VARGHESE² has to be justifiably applied in the case on hand. As the petitioner has already paid 7% of this interest component, the balance 11% thereof shall be paid by the bank. The entire bid amount of Rs.1,40,96,000/- along with the interest thereon at 18% shall be remitted by the bank to the second respondent within two weeks from the date of receipt of a copy of this order. The auction sale held on 01.08.2016 is accordingly set aside and the bank is directed to release the petitioner's secured asset, as it has already received the entire amount due to settle the loan account, being the sum of Rs.1,59,82,934/- and the OTS amount of Rs.10,21,198/-. The title deeds in relation to the said secured asset shall be handed over to the petitioner along with the letter of release within two weeks from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. Steps shall be taken to bring this order to the notice of the Tribunal, so that appropriate orders of closure are passed in S.A.No.482 of 2016. Pending miscellaneous petitions, including I.A.No.3 of 2018, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

24th JULY, 2018

PGS