

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.2314 of 2018

% Date: 16-4-2018

Smt. P.Sudha Lakshmi, W/o. Praveen Reddy,
Aged about 40 years, R/o. Plot No.216,
Lakshminagar Colony, Boduppal, Hyderabad

... Petitioner

Vs.

\$ 1. Bank of India, Boduppal Branch, Plot Nos.12&13,
Anushareddy Sai Manisha Reddy Mansion,
Veera Reddy Nagar, Boduppal, R.R. District,
Rep. by its Authorised Officer

2. Koti Praveen Kumar, S/o. Yadaiah,
Aged 35 years, Business, H.No.11-5-207,
Bhavani Nagar, Moosapet, Hyderabad-500 018

... Respondents

! Counsel for Petitioner: Mr. Ambadipudi Satyanarayana

Counsel for Respondent No.1: Smt. V.Dyumani,
Standing Counsel

Counsel for Respondent No.2: ---

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> Head Note:

? Cases referred:

1. (2013) 10 SCC 83

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.2314 of 2018

Order: (per V.Ramasubramanian, J.)

Challenging an order of the Debts Recovery Tribunal dismissing an application for setting aside a sale conducted by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioner has come up with the above writ petition.

2. Heard Mr. Ambadipudi Satyanarayana, learned counsel for the petitioner and Smt. V.Dyumani, learned Standing Counsel for the 1st respondent/Bank.

3. The 2nd respondent is the auction purchaser. He was made a party to the appeal S.A.No.996 of 2017 filed by the petitioner before the Debts Recovery Tribunal under Section 17 of the Act. It is stated that despite service of notice, he did not appear before the Tribunal.

4. Even before this Court, notice was ordered to the 2nd respondent/auction purchaser. Though the Court notice returned unserved with an endorsement "*Not claimed returned to sender*", the personal notice sent by the counsel for the petitioner by speed post, appears to have been delivered, as seen from the tracking system. Therefore, we have taken up the writ petition for hearing. But he has not chosen to enter appearance.

5. The petitioner's husband availed facilities from the 1st respondent/Bank and the account became a non-performing asset. The petitioner guaranteed the repayment of the loan and also offered her house property as security.

6. After the account became a non-performing asset, the Bank issued a demand notice under Section 13(2) of the Act on 16-9-2014. It was followed by a possession notice dated 18-5-2015.

7. A notice under Rule 8(6) and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, dated 18-9-2015, was issued followed by an E-Auction notice dated 26-9-2015. The E-Auction notice was challenged by the petitioner in W.P.No.37565 of 2015. While ordering notice, this Court directed the petitioner to pay the entire amount due to the Bank with interest and directed the Bank not to confirm the sale if such payment was made. But the payment was not made and the writ petition was dismissed on 16-6-2016 for non-prosecution.

8. As a consequence, the Bank confirmed the auction, received the balance of sale consideration and issued a Sale Certificate dated 29-01-2016. The Bank also approached the Chief Metropolitan Magistrate by way of an application under Section 14 in CrI.M.P.No.836 of 2015 and took possession.

9. Challenging the sale certificate issued on 29-01-2016, the petitioner filed an appeal in S.A.No.46 of 2016 on

the file of the Debts Recovery Tribunal-I, Hyderabad. It was transferred to Debts Recovery Tribunal-II and renumbered as S.A.996 of 2017.

10. After hearing, the Tribunal dismissed the application on the ground that there was no infringement of the Statutory Rules, in the manner of conduct of the auction. Aggrieved by the dismissal of the application, the petitioner has come up with the above writ petition.

11. The short ground on which the petitioner challenges the Sale Certificate dated 29-01-2016 and the order of the Tribunal confirming the sale is that there has been a gross violation of Rule 9(3) and 9 (4) of the Security Interest (Enforcement) Rules, 2002.

12. Rule 9 of the Security Interest (Enforcement) Rules, 2002, as it stood as in October, 2015, the date of conduct of auction sale in this case, before its amendment in the year 2016, read as follows:

“9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) 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 authorised officer and shall be subject to confirmation by the secured creditor: Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9: Provided

further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.”

13. It is clear from sub-rules (3) and (4) of Rule 9 – (i) that the purchaser, upon sale of immoveable property, should immediately pay a deposit of 25% and (ii) that the balance of purchase price shall be paid on or before the 15th day of confirmation of sale or such extended period as may be agreed upon in writing between the parties.

14. The expression “parties” appearing in Rule 9(4) was interpreted by the Supreme Court in **Sri Siddeshwara Cooperative Bank Ltd. v. Ikbali**¹ to mean – (i) the secured creditor, (ii) the borrower and (iii) the auction purchaser. In order to get over the said interpretation, the word “parties” was substituted by the words “purchaser and the secured creditor” by an amendment to the rules that came into effect on 04-11-2016.

15. Keeping the above statutory provision in mind, let us come back to the facts of the present case, as projected by the 1st respondent/Bank. In paragraph-10 of the counter affidavit, the 1st respondent has stated as follows:

“10. It is submitted that the E Auction was conducted on 29-10-2015. The auction purchaser paid the EMD of Rs.5.00 lakhs on 23-10-2015 and deposited 25% of the bid amount including after deducting the EMD on 05-11-2015 with Boduppall Branch and kept with sundries. In view of the interim orders in W.P.No.37565 of 2015, the

¹ (2013) 10 SCC 83

Sale Confirmation letter was issued on 09-11-2015 and the auction purchaser paid 75% of the bid amount on 29-01-2016 and bank has issued Sale Certificate subsequently and registered the same. It is humbly submitted that there is no irregularity in conducting the auction and the allegations contra are not true.”

16. From the portion of the counter affidavit extracted above, it is clear that there were two violations. They are: (i) that the purchaser paid 25% of the bid amount only after seven days viz., on 05-11-2015 despite the auction having been conducted on 29-10-2015 and (ii) that the purchaser paid the balance 75% after 50 days viz., on 29-01-2016, though the Sale Confirmation Letter was issued on 09-11-2015.

17. Thus, there is a clear violation of two prescriptions one contained in sub-rule (3) and another contained in sub-rule (4) of Rule 9. It is pertinent to note that before the 2016 amendment to the rules, any extension of time beyond a period of 15 days from the date of confirmation of sale, for the payment of the balance 75%, should be by way of an agreement in writing between the parties. In this case, the Bank does not even plead, at least for the sake of formality that there was any agreement in writing between the Bank and the auction purchaser. As a matter of fact, by virtue of the interpretation given by the Supreme Court in *Sri Siddeshwara Cooperative Bank Ltd. V. Ikbali* to the words “parties” appearing in Rule 9(4), the Bank ought to have entered into a tripartite agreement in writing with the

borrower and the auction purchaser. Since the declaration of law made by the Supreme Court in the said case was made on 22-8-2013 (date of judgment in *Siddheswara* case) and since the auction in this case was conducted only after the said date i.e., on 29-10-2015, the Bank is expected to know the law and the Bank should have entered into a tripartite agreement on 09-11-2015, the date of issue of the confirmation letter or at least on 24-11-2015 the date of expiry of 15 days from the date of confirmation, for the grant of extension of time up to 29-01-2016. Let us assume for a minute that the Bank was ignorant of the interpretation given by the Supreme Court to the word “parties”. Even then, the Bank should have at least had an agreement in writing with the auction purchaser, since even without the interpretation of law given by the Supreme Court, this necessity was there by way of statutory prescription. But it is not the case of the Bank, in their counter affidavit that they had an agreement in writing at least with the auction purchaser. Hence, there is a clear violation of the statutory prescription in the manner in which the sale was confirmed.

18. In any case, the leverage available under rule 9(4) to grant extension of time to pay the balance 75%, is not available under rule 9(3) for payment of the first 25% of the bid amount. No extension of time is possible for payment of the first 25%, since sub-rule (3) of rule 9 does not provide for this. The reason is that if payment off 25% is not made

“immediately” as stipulated in sub-rule (3), the property is required to be sold **“forthwith again.”**

19. Unable to overcome the defects in the process of sale, the learned Standing Counsel for the Bank raised two different objections viz., (i) that as against the impugned order of the Debts Recovery Tribunal, the petitioner ought to have gone before the Debts Recovery Appellate Tribunal and (ii) that the petitioner already made a challenge to the auction notice before this Court and failed and hence she may not be entitled to challenge the sale before the Tribunal.

20. Insofar as the first objection is concerned, we do not think that it is open to the 1st respondent/Bank to raise such an objection. It is true that the petitioner could have gone before the Debts Recovery Appellate Tribunal. But the availability of alternative remedy is not always a bar, at least for the exercise of the jurisdiction under Article 226 of the Constitution of India. The restraint is self-imposed and not statutorily imposed. When even on admitted facts, going by the very pleadings of the 1st respondent/Bank, things are as clear as crystals, pointing to a very clear violation of the statutory prescription, it is wholly unjust to close our eyes to the blatant violation and send the petitioner to the Debts Recovery Appellate Tribunal.

21. Insofar as the second objection is concerned, the dismissal of the writ petition challenging the auction notice will not stand in the way of the petitioner questioning the

subsequent conduct. When an auction notice is challenged, the scrutiny is confined to Rule 8(6) and Rule 9(1) alone. But after the auction is concluded, Rules 9(3) and 9(4) come into play and if there are any infringement of the stipulations contained therein, such violations become a subsequent cause of action. A challenge to an auction notice is completely different from a challenge to the conduct of the Bank after the auction, if it is not in conformity with sub-rules (3) and (4) of Rule 9. Therefore, both the objections of the 1st respondent/Bank are ill-founded.

22. Unfortunately, the Debts Recovery Tribunal brushed aside the blatant statutory violations on the part of the Authorised Officer in the matter of sale. In one paragraph, the Tribunal rejected the contention revolving around Rule 9(4), as without any substance. In fact, the reasoning in paragraph-12 of the order of the Tribunal is actually without substance. Hence, the order is liable to be reversed.

23. The property now sold is a house property and the petitioner has been making a cry that she is a cancer patient tossed between the Bank and the hospital. Therefore, we cannot close our eyes to the blatant violation of the Rules and drive the petitioner mercilessly out of this Court merely on the ground of availability of an appellate remedy before the Debts Recovery Appellate Tribunal.

24. In view of what is stated above, the writ petition deserves to be allowed. Accordingly, it is allowed, the order of

the Tribunal is set aside, the Sale Certificate issued on 29-01-2016 is set aside and the Bank is directed to recover possession from the 2nd respondent and keep the same in their custody, within a period of 4 (four) weeks from the date of receipt of a copy of this order. It will be open to the Bank thereafter to initiate action afresh in accordance with law for the recovery of dues. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

16th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.2314 of 2018
[For Orders - per VRS, J.]



16th April, 2018.
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