

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.7928 of 2017

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

This writ petition is filed questioning the sale notice dated 21.02.2017, served on the petitioner on 03.03.2017, issued by the respondent-bank proposing to sell his property on 07.03.2017 as illegal, arbitrary and in contravention of Rules 8(6) and 9 of the Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules").

A demand notice, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), was issued on 24.10.2014; and, thereafter, a possession notice under Section 13(4) of the SARFAESI Act was issued on 31.01.2015. While a sale notice was issued earlier, fixing the date of auction as 26.12.2016, the auction did not take place on that date resulting in the respondent-bank issuing a second sale notice on 21.02.2017 fixing the date of auction as 07.03.2017. The said sale notice was served on the petitioner-borrower on 03.03.2017. The petitioner invoked the jurisdiction of this Court by filing the present writ petition, and an interim order was passed on 21.03.2017 directing the respondent-bank not to confirm the sale.

The petitioner filed an application to implead the auction purchaser, on being so permitted by this Court by its order in WPMP.No.19849 of 2017 dated 06.06.2017, and the notice sent to the auction purchaser was returned un-served with the endorsement "refused". As refusal to receive the notice amounts to deemed service, we are disposing of the writ petition after hearing Sri V.V.Satish, learned counsel for the petitioner, and Ms. V.Uma Devi, learned Standing Counsel for the respondent-bank.

Rule 9(1) of the 2002 Rules stipulates that no sale of immovable property under the rules, in the first instance, shall be made before expiry of thirty days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to Rule 8(6), or notice of sale has been served to the borrower.

While the learned counsel for the petitioner would contend that Rule 9(1) of the 2002 Rules was not complied with even with respect to the auction sale held on 26.12.2016, it is wholly unnecessary for us to examine those contentions as, even if the proviso to Rule 9(1) of the 2002 Rules is held applicable, it does appear that the requirement of the said proviso has not been complied with.

The proviso to Rule 9(1) of the 2002 Rules stipulates that, if sale of immovable property by any one of the methods specified in Rule 8(5) fails, and the sale is required to be conducted again, the authorised officer shall serve, affix and publish a notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

The obligation placed on the authorised officer, while conducting a second sale, is to serve, affix and publish a notice of sale not less than fifteen days to the borrower. While the second sale notice is dated 21.02.2017, the date of auction was stipulated as 07.03.2017 which is 14 days from the date of the sale notice dated 21.02.2017. Further the said sale notice was served on the petitioner-borrower only on 03.03.2017 which is just four days prior to the date of sale i.e 07.03.2017. As the requirement of the proviso to Rule 9(1) is that the sale notice should be served, affixed and published, not less than 15 days prior to the date of auction, it is evident that the auction held on 07.03.2017 falls foul of the proviso to Rule 9(1) of the 2002 Rules.

On this short ground alone the impugned sale notice, and the auction held pursuant thereto, must be, and are accordingly, set aside.

This order shall not disable the respondent-bank from complying with the requirements of the 2002 Rules, and take further action thereafter in accordance with law.

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

11th September, 2018
JSU



**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



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Date: 11.09.2018

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