

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION Nos.39703 & 44675 of 2017 and 5224 of 2018

COMMON ORDER: (per SK,J)

These three matters are amenable to disposal by way of this common order as they relate to the same issue.

The petitioner in W.P.No.44675 of 2017 is the principal borrower of the loan from the Corporation Bank which led to initiation of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), while the petitioner in W.P.Nos.39903 of 2017 and 5224 of 2018 was the guarantor for the said loan who mortgaged her properties as security therefor.

The prayer in W.P.No.39703 of 2017 reads as under:

'For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Mandamus, declaring the action of the 2nd respondent bank by issuing e-auction notice under Rule 8 (6) r/w Rule 9 (1) of SARFAESI Act dated 23.10.2017 served on the petitioner on 26.10.2017 in continuance with the same conducted e-auction proceedings on 16.11.2017 in connection with the petitioner's property mentioned in e-auction notice, wherein the respondents 3 to 5 are become highest bidders by confirmation of sale all are in violation of the law and procedure as contemplated under SARFAESI Act and RDB Act and violation of Articles 14, 19, 21 and 300-A of Constitution of India including in violation of apex Court ruling Canara Bank Vs. M.Amarender Reddy & Anr and consequently to set aside the e-auction proceedings dt.16.11.2017 in the interest of justice and to pass such other order or orders that the Hon'ble Court may deem fit and proper in the interest of justice.'

The prayer in W.P.No.44675 of 2017 reads as under:

‘For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Mandamus, declaring the action of the 2nd respondent bank in issuing letter dated 20.11.2017 to respondents 3 to 5 in connection with e-auction held on 16.11.2017 inviting them to deposit 75% balance of sale consideration within 15 days from the date of the receipt of letter, on such letter, the respondent bank waiting for the amount even though they are not deposited balance of sale consideration till date as per the own admission made by the 2nd respondent bank in his affidavit dated 18.12.2017, it is nothing but 2nd respondent bank re-written their own law is illegal, arbitrary and against the law and principles of natural justice particularly in violation of Rule 9 (3) and (4) of The Security Interest (Enforcement) Rules, 2002 and also violative of Articles 14, 19, 21 and 300 of Constitution of India and consequently to direct the 2nd respondent bank not to issue any sale considerations in favour of respondents 3 to 5 and to pass such other order or orders that the Hon’ble Court may deem fit and proper in the interest of justice.’

The prayer in W.P.No.5224 of 2018 reads as under:

‘For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Mandamus, declaring the action of the respondent bank entertaining the unofficial respondents / auction purchasers inviting them to deposit the 75% of balance consideration in connection with the petitioner property auctioned on 16.11.2017 even though they are not deposited originally within a 15 days from the date of auction, likewise within a period of 90 days as per the Rule 9 (4) of SARFAESI Act is in violation of the law and procedure prescribed under the Act including violation of Articles 14, 21 and 300-A of Constitution of India and against various rulings of Apex Court, consequently to set aside the auction proceedings dated 16.11.2017 in the interest of justice and to pass such other order or orders that the Hon’ble Court may deem fit and proper in the interest of justice.’

By order dated 23.11.2017 passed in W.P.No.39703 of 2017, this Court observed that the auction sale held on 16.11.2017 shall be subject

to further orders. It appears that the bank treated this observation as an interim order interdicting it from proceeding with the auction sale that materialised on 16.11.2017 and failed to receive the balance sale consideration of 75% of the bid amount from the successful bidder. This led to the filing of the later writ petitions by the borrower and the guarantor in W.P.Nos.44675 of 2017 and 5224 of 2018.

It is now represented by Smt.V.Dyumani, learned counsel for the respondent Corporation Bank, that as the bank did not complete the sale transaction, the successful bidder in the auction sale held on 16.11.2017 is not desirous of proceeding further and requested the bank to refund the consideration amount already paid by him. She would further state that the bank itself is of the opinion that the said auction sale should be cancelled so as to enable it to proceed afresh under the provisions of the SARFAESI Act.

The statement made on behalf of the Corporation Bank that the auction sale held on 16.11.2017 will be cancelled is taken on record. In consequence, the grievance of the petitioners in these three cases with regard to the said auction sale no longer survives for consideration on merits.

The writ petitions are accordingly closed. Pending miscellaneous petitions, if any, in these three writ petitions shall also stand closed. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:26.02.2018
GJ

