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

WRIT PETITION Nos.5551 and 9265 OF 2018

COMMON ORDER
(*Per Sri Justice Sanjay Kumar)*

W.P.No.5551 of 2018 was filed by Gudi Monisha assailing the action of the Bank of India (*hereinafter*, 'the bank') in issuing auction sale notice dated 08.01.2018, published in newspapers on 12.01.2018, proposing to put to sale her residential Flat bearing No.403, Suryateja Towers, Manikya Nagar, Kanoor, Vijayawada, Krishna District, on 20.02.2018, on the ground that it was in violation of the procedure prescribed in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for short*, 'the SARFAESI Act') and the Rules framed thereunder. Gudi Monisha admittedly stood as a surety for the loan availed by M/s. Maruthi Minerals Private Limited from the bank and mortgaged her flat with the bank by depositing her title deeds.

W.P.No.9265 of 2018 was filed by Yugandhar Bala, the successful auction purchaser in the sale held on 20.02.2018 by the bank in so far as Gudi Monisha's flat is concerned, assailing the action of the bank in not extending time for him to make the payment of the balance 75% of the sale consideration, i.e., Rs.33,82,500/-.

No interim orders were passed in either of these writ petitions.

Heard Sri R.Siva Sai Swaroop, learned counsel for Gudi Monisha, Sri Mummaneni Srinivasa Rao, learned counsel for Yugandhar Bala, and Smt.T.Vidya Rani, learned counsel for the bank.

Sri R.Siva Sai Swaroop, learned counsel, would point out that in the event Yugandhar Bala, the auction purchaser, emerges unsuccessful in his attempt to garner further time for paying the balance sale consideration, the auction sale held by the bank on 20.02.2018 would automatically fail in the context of the statutory provisions of the SARFAESI Act and the Rules framed thereunder and therefore, the fate of W.P.No.5551 of 2018 filed by Gudi Monisha would hinge upon the adjudication of W.P.No.9265 of 2018.

This Court finds merit in this submission. Unless the sale held on 20.02.2018 in favour of Yugandhar Bala is upheld and stands protected, challenge by Gudi Monisha to the said sale would be rendered academic.

Sri Mummaneni Srinivasa Rao, learned counsel, would state that his client participated in the auction sale held on 20.02.2018 in so far as Gudi Monisha's flat is concerned and emerged the highest bidder with a bid of Rs.45,10,000/-. He would point out that the auction purchaser paid Rs.4,50,000/- on 19.02.2018, Rs.4,00,000/- on 21.02.2018 and Rs.2,77,500/- on 21.02.2018, whereby 25% of the bid amount was duly remitted. Learned counsel would state that the bank called upon his client, *vide* letter dated 22.02.2018, to deposit the balance 75% of the sale consideration, *viz.,* Rs.33,82,500/-, on or before 07.03.2018. He would further state that his client addressed letter dated 07.03.2018 requesting the bank to extend time for deposit of the balance sale consideration up to the end of April, 2018, but the bank refused to consider the request under its e-mail dated 07.03.2018. Though in the affidavit filed in support of the writ petition, Yugandhar Bala averred that the bank failed to give details of the encumbrances attaching to the subject flat and asserted that it was not in a position to hand over physical possession thereof, no details were furnished in relation thereto.

The bank filed a counter through its Chief Manager at its Zonal Office in Hyderabad, wherein it stated that upon Yugandhar Bala emerging the highest bidder in the auction sale held on 20.02.2018, the auction of the subject Flat was knocked down in his favour and he paid 25% of the sale consideration amount on 21.02.2018. He further stated that the bank issued confirmation letter dated 22.02.2018 calling upon Yugandhar Bala to deposit the balance 75% of the sale consideration on or before 07.03.2018. He denied the allegation that the bank did not give details of the encumbrances attaching to the subject flat and that the bank was unable to handover physical possession of the same. He pointed out that in terms of the amended provisions of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'), time could be extended up to a maximum period of three months only, but despite the same, the bank did not consider the request for extension of time up to the end of April, 2018. The contention of Yugandhar Bala that the bank failed to disclose the factum of Gudi Monisha filing W.P.No.5551 of 2018 was answered by stating that the said writ petition was not filed prior to the auction date. He further pointed out that no stay had been granted in the said writ petition and that the auction sale was held on 20.02.2018 as scheduled.

Perusal of the record reflects that W.P.No.5551 of 2018 was filed by Gudi Monisha on 19.02.2018 and came up for admission for the first time on 20.02.2018. As already stated *supra*, no interim orders were granted therein interdicting the sale proposed to be held on 20.02.2018. Therefore, institution and pendency of W.P.No.5551 of 2018 cannot be said to have been within the knowledge of the bank on 20.02.2018 when the sale was held.

As already pointed out *supra*, the auction purchaser did not give details of any encumbrances attaching to the property. In any event, it is not his case that he wishes to back out of the sale on that ground but only seeks extension of time. Such a prayer for extension of time cannot be linked to any encumbrances attaching to the property sold, even if they exist. It is relevant to note that Rule 9 of the Rules of 2002, dealing with the time of sale, issuing of sale certificate and delivery of possession etc., was amended with effect from 04.11.2016, by way of G.S.R.1046(E) dated 03.11.2016. Rules 9(3), 9(4) and 9(5) of the Rules of 2002 prior to such amendment read as follows:

> '9(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 authorized officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.
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> (4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized 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.
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> (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.'

After amendment, these provisions read as under:

> '9(3) On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.
>
> (4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized 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 purchaser and the secured creditor, in any case not exceeding three months.
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> (5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor 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.'

In the light of the changes made to the aforestated provisions, it is clear that the auction purchaser is required to deposit 25% of the sale price, either on the date of sale or not later than the next working day. This condition was duly complied with as Yugandhar Bala deposited 25% of the sale consideration by 21.02.2018, the next day after the sale on 20.02.2018. However, the amended scenario under Rule 9(4) provides that the balance 75% of the sale consideration has to be paid by the auction purchaser on or before the fifteenth day of confirmation of the sale or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months. The aforestated amended provision makes it clear that as a general rule, the auction purchaser still continues to be under the liability of paying the balance sale consideration on or before the fifteenth day of confirmation of the sale. The amended provisions of Rule 9(4) of the Rules of 2002 however add an exception to this general rule by stating that such period can be extended by agreement in writing between the purchaser and the secured creditor, subject to the rider that any such extension cannot exceed three months. In the case on hand, it is an admitted fact that the sale was confirmed on 22.02.2018 and Yugandhar Bala was called upon to pay the balance sale consideration on or before 07.03.2018, being the fifteenth day from the date of such confirmation. Yugandhar Bala thereupon addressed letter dated 06.03.2018 and e-mail dated 07.03.2018 to the bank seeking extension of time to deposit the balance 75% of the sale consideration. On the very same day, i.e., 07.03.2018, the bank sent an e-mail informing him that it could not consider his request for extension of time and called upon him to remit the remaining 75% of the bid amount immediately on that day, i.e., 07.03.2018. There was therefore no agreement in writing between the auction purchaser and the bank with regard to any extension of time beyond the stipulated fifteen day period from the date of confirmation of the sale.

Sri Mummaneni Srinivasa Rao, learned counsel, would however place reliance on the letter dated 08.06.2018 addressed by the Chief Manager and Authorized Officer of the Tirupathi Branch of the bank, whereunder the Chief Manager called upon Yugandhar Bala to pay the balance 75% of the sale consideration immediately, failing which, he reserved the bank’s right to appropriate the amount already deposited and go for a fresh auction. Learned counsel would contend that as the bank itself issued this letter on 08.06.2018, it would be open to this Court to grant his client some more time to make the balance payment.

This argument however loses sight of the amended Rule 9(4) of the Rules of 2002 which stipulates in no uncertain terms that extension, even if agreed upon in writing by the secured creditor and the auction purchaser, cannot exceed three months. As the fifteen day period stipulated for payment of the balance sale consideration from the date of confirmation of the sale expired on 07.03.2018, any extension cannot exceed three months from the said date. Therefore, there can be no extension of time beyond 07.06.2018 as per the statutory regime extant.

In the light of this statutory embargo, it would not be open to this Court to grant further time as prayed for by Sri Mummaneni Srinivasa Rao, learned counsel. The statutory mandate cannot be diluted by this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution. The time stipulation envisaged by the statute would be equally binding on this Court.

On the aforestated analysis, the claim of Yugandhar Bala, the auction purchaser, for further extension of time at this stage cannot be countenanced. As there was never any agreement in writing between him and the bank as to extension of time beyond the stipulated fifteen day period, which expired on 07.03.2018, the bank cannot be found fault with. W.P.No.9265 of 2018 filed by Yugandhar Bala therefore fails and is accordingly dismissed. In consequence, the sale held on 20.02.2018 must also fail for the failure of the auction purchaser to pay the balance sale consideration as per Rule 9(4) of the Rules of 2002. The challenge to the said sale by Gudi Monisha in W.P.No.5551 of 2018 is therefore rendered purely academic and does not warrant consideration on merits. The said writ petition also fails on that count. Both the writ petitions are accordingly dismissed leaving it open to the bank to proceed further in the matter in accordance with law.

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

SANJAY KUMAR,J

T.AMARNATH GOUD,J

2nd JULY, 2018

PGS