

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

Writ Petition No.42760 of 2016

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

This writ petition is filed seeking a mandamus to declare the order passed by the Debt Recovery Tribunal in S.A.No.172 of 2011 dated 05.10.2016; the order passed in I.A.No.1451 of 2016 in S.A.No.172 of 2011 dated 22.06.2016 quashing the letter of the 1st respondent-Authorised Officer dated 08.06.2016 forfeiting 25% of the bid amount for the auction held on 04.07.2012; failure to deposit the balance 75% of the sale price in terms of the forfeiture notice dated 17.07.2012 by the 3rd respondent; and the further proceedings dated 24.08.2012 directing the 3rd respondent to deposit 75% of the balance sale consideration after four years without notice and hearing the petitioners and passing orders leading upto the dismissal of S.A.No.172 of 2011, as illegal, violative of principles of natural justice and as contrary to law.

The facts, to the limited extent necessary, are that the petitioners herein (brothers) guaranteed a loan, taken by M/s.Renown Industries Private Limited from the 2nd respondent-bank for manufacturing aluminium composite panels, to the extent of their property. The borrower-company had immovable properties of an extent of Ac.1.04 cents in Survey No.330/A1 and A2 of Chandampeta Village, Sankarampet Mandal, Medak District; an extent of Ac.1.04 cents in Survey No.301/A1 and A2 of the same village; and Ac.2.08 cents in the name of the Managing Director of the borrower-company in Survey No.330/A1 of the same village. The borrower had constructed a factory on the said land erecting sheds covering an

extent of 34,500 square feet. After the death of the Managing Director in 2010, a demand notice dated 04.12.2010 was issued by the 2nd respondent-bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) and was published in the Indian Express English Daily on 09.01.2011. The petitioners furnished a reply thereto on 25.02.2011, under Section 13(3A) of the SARFAESI Act, and it is their case that, even without an order being passed thereupon, a possession notice dated 20.05.2011 under Section 13(4) of the SARFAESI Act was published in both Telugu Daily and English Daily on 26.05.2011; the properties published in the Telugu Daily were at variance with those published in the English Daily; in the Telugu Daily, the properties of the company and the name of the Managing Director were absent; and this was followed by an auction notice dated 31.05.2011 questioning which the petitioners had filed S.A.No.172 of 2011.

Thereafter, the Debt Recovery Tribunal passed an order on 01.07.2011 staying the sale until further orders on condition that the petitioners deposited Rs.12,00,000/- within eight weeks. However, the petitioners failed to deposit the said amount as directed by the Debt Recovery Tribunal, and were able to deposit only Rs.2,00,000/-. A fresh auction notice dated 28.05.2012 was issued fixing the auction sale on 04.07.2012. The petitioners questioned the said auction notice in I.A.No.819 of 2012 wherein they also sought extension of time to deposit the balance amount of Rs.6,00,000/-. The petitioners claim to have deposited Rs.6,00,000/- by 03.07.2012. They filed W.P.No.20169 of 2012 which was disposed of on 04.07.2012 directing the Debt Recovery Tribunal to dispose of all the applications filed by the petitioners in S.A.No.172 of 2011, as

expeditiously as possible, within a period of two weeks. Since the Debt Recovery Tribunal did not take up the said applications, the petitioners filed W.P.No.21714 of 2012 and, by order dated 18.07.2012, this Court directed the bank not to confirm the sale in respect of the properties of the petitioners without leave of the Court. The writ petition was disposed of by order dated 14.08.2012 directing the 2nd respondent-bank not to confirm the sale without leave of the Debt Recovery Tribunal, and making the sale subject to the result of S.A.No.172 of 2011. This Court observed that the appeal filed by the petitioners shall be disposed of by the Debt Recovery Tribunal at an early date.

Thereafter, the petitioners requested that the matter be referred to Lok Adalat and, on refusal of the Debt Recovery Tribunal to do so, they filed W.P.No.5586 of 2014 and, in its order dated 19.03.2014, this Court observed that pendency of the writ petition did not preclude the Debt Recovery Tribunal from taking a decision on the request made by the petitioners for referring the dispute to the Lok Adalat. By order in S.A.No.177 of 2011 dated 24.03.2014, the Debt Recovery Tribunal referred the matter to the Lok Adalat. Before the Lok Adalat, an objection was taken that the auction purchaser was not impleaded and, consequently, the matter was referred to the Debt Recovery Tribunal to implead the auction purchaser. While the 3rd respondent-auction purchaser was impleaded, by order in I.A.No.4676 of 2014 dated 04.09.2014, he does not appear to have filed his counter in the S.A.

It is the petitioners' case that an auction was held on 04.07.2012, and the auction purchaser was required to deposit 25% of the bid amount by the next day; the 1st respondent had confirmed the sale in favour of the 3rd respondent, and had directed him to

deposit the balance 75% of the amount within 15 days; the 3rd respondent was called upon to deposit Rs.62,25,000/- by 18.07.2012; by his letter dated 17.07.2012, the 3rd respondent requested ten days time to deposit the balance sale price; time, as sought for, was extended till 27.07.2012; and the 3rd respondent did not deposit the balance sale price even by then, though there was no direction preventing him from depositing the balance sale price.

The 1st respondent-Authorised Officer appears to have forfeited 25% of the bid amount, by his letter dated 08.06.2016, questioning which the 3rd respondent filed I.A.No.1451 of 2016 in S.A.No.172 of 2011 to quash the said letter dated 08.06.2016, issued by the respondent-bank, cancelling the auction sale and forfeiting 25% of the bid amount paid after confirmation of sale dated 04.07.2012; and to permit him to deposit the balance sale consideration on or before the 15th day of confirmation of sale.

In its order dated 22.06.2016, the Debt Recovery Tribunal held that the sale was not yet confirmed and, therefore, the auction purchaser was not liable to pay 75% of the balance sale consideration; and the respondent-bank could not, therefore, forfeit 25% of the amount deposited by him. Subsequently, the Debt Recovery Tribunal, by its order dated 07.09.2016, directed the auction purchaser to deposit the balance sale consideration, i.e. 75% of the bid amount, within two weeks directly with the respondent-bank. The 3rd respondent appears to have paid the balance sale consideration on 14.09.2016.

S.A.No.172 of 2011 was dismissed, by order dated 05.10.2016, holding that neither was the counsel for the petitioners present nor were there any merits in the contentions raised by them. The 3rd respondent was directed to pay compensation of Rs.2,00,000/-

towards interest to the bank; the respondent-bank was directed to confirm the sale of the schedule property, and issue a sale certificate to the 3rd respondent-auction purchaser and hand over possession of the property. Aggrieved thereby, the petitioner has invoked the jurisdiction of this Court by way of this Writ Petition.

Sri K.V.Simhadri, learned counsel for the petitioners, would submit that absence of the counsel before the Debt Recovery Tribunal at Hyderabad was because the petitioners were unaware of the matter being listed before the Debt Recovery Tribunal, Hyderabad; all the earlier proceedings, relating to the said S.A, were heard by the Presiding Officer of the Debt Recovery Tribunal at Calcutta; though the petitioners had specifically raised several contentions, in the S.A filed before the Debt Recovery Tribunal, none of them were considered; the petitioners had contended that they had filed their objections to the Section 13(2) notice under Section 13(3A) of the SARFAESI Act; the 2nd respondent-bank was obligated to consider the application; the possession notice, under Section 13(4) of the SARFAESI Act, was required to be made in terms of Appendix IV under Rule 8(1) and (2) of Security Interest (Enforcement) Rules, 2002 (for short “the Rules”); the said notice was required to be served on the borrower and the guarantor, and to be published in two newspapers; the publication in the Indian Express (English Daily) was at variance with the publication in Andhra Jyothi (Telugu Daily); while, in the former, the properties of the borrower were shown, in the latter they were not; this would establish that the requirement of Section 13(4) of the SARFAESI Act have not been complied with; the bank had confirmed the sale on 05.07.2018, and a copy of the confirmation order has been filed before this Court along with the counter-affidavit filed by the bank; this fact, of the sale having been

confirmed, was not brought to the notice of the Debt Recovery Tribunal either by the bank or the auction purchaser, though he received the sale confirmation letter on 05.07.2016 itself; under the impression that the sale had not been confirmed, the Debt Recovery Tribunal has held that the obligation of the 3rd respondent to pay 75% of the balance sale consideration would arise only after confirmation of the sale, since the sale had not been confirmed, the auction purchaser was not obligated to pay the balance 75%, and the bank was not justified in forfeiting the earlier 25% of the amount deposited by the auction purchaser on this ground; and, since none of these contentions were examined by the Debt Recovery Tribunal, the impugned orders passed by the Debt Recovery Tribunal must be set aside.

On the other hand both Sri Mohammed Habibullah, learned counsel for the respondent-bank and Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the 3rd respondent-auction purchaser, would submit that, while the obligation placed on the bank under Section 13(3A) is mandatory, a perusal of the objections filed thereto by the petitioners would show that the only legal contention they raised was that it was the Authorised Officer who was required to issue the Section 13(2) notice, and not the Assistant General Manager of the respondent-bank; Section 13(2) of the SARFAESI Act obligates the secured creditor to issue the notice and not the Authorised Officer; the Assistant General Manager of the respondent-bank(secured creditor) was, therefore, justified in issuing the notice under Section 13(2) of the SARFAESI Act; variation in the publication in Appendix IV, read with Rule 8(2) of the Rules, is only with respect to the properties of the borrower; the properties of the petitioners, in both the English Daily and Telugu Daily, is the same;

failure to furnish details of the properties of the borrower in the Telugu Daily is not fatal; in any event, the petitioners cannot claim to have suffered any prejudice thereby, as their properties are reflected in both the dailies; even if the interim certificate dated 05.07.2012 is presumed to be the sale confirmation letter, the obligation to deposit 25% thereof would arise only by 20.07.2012 before which date, this Court had passed an interim order on 18.07.2012, directing the respondent-bank not to confirm the sale; and the auction purchaser was, therefore, justified in approaching the Debt Recovery Tribunal, and requesting it to set aside the letter of forfeiture issued by the respondent-Bank.

The letter dated 05.07.2012, issued by the 1st respondent-Authorised Officer, is titled as an “interim certificate”. Thereby the Authorised Officer certified that the 3rd respondent had become the successful bidder in the sale by inviting tenders, and the auction conducted in respect of the secured assets belonging to the petitioners; on 04.07.2012, he had deposited Rs.8,00,000/- and, on 05.07.2012, Rs.12,75,000/- totalling to Rs.20,75,000/- being 25% of the bid amount; and he should deposit the balance amount of Rs.62,25,000/- within 15 days i.e on or before 18.07.2012, failing which the sale conducted would stand cancelled, and the amount deposited of Rs.20,75,000/- shall stand forfeited without any further notice. This interim certificate is acknowledged by the 3rd respondent affixing his signature thereto on 05.07.2012.

While Sri K.V.Simhadri, learned counsel for the petitioners, would contend that this interim certificate is the sale confirmation letter, Sri Mohammed Habibullah, learned counsel for the respondent-bank, and Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the 3rd respondent, would contend otherwise.

It is wholly unnecessary for us to examine this aspect, as this interim certificate dated 05.07.2012 was not even brought to the notice of the Debt Recovery Tribunal which, on the premise that the sale had not been confirmed, granted time to the 3rd respondent to deposit the balance sale consideration.

If, as is now contended before us by Sri K.V.Simhadri, learned counsel for the petitioner, the interim certificate is the sale confirmation letter, then the order passed by the Debt Recovery Tribunal, in ignorance of such a certificate, would be illegal and invalid, and would be required to be set aside. The Debt Recovery Tribunal has also not examined whether the respondent-bank was justified, in the light of the reply submitted by the petitioners, to the notice under Section 13(2) of the SARFAESI Act, in not passing any order under Section 13(3A) of the SARFAESI Act. The DRT has also not examined the effect of variance in the contents of the Section 13(4) notice in Indian Express (English Daily) and Andhra Jyothi (Telugu Daily).

While absence of the petitioners' counsel on the date of hearing, may possibly be the reason why these contentions were not examined, the fact remains that the very basis, for the DRT to set aside the letter of forfeiture dated 08.06.2016, is that the sale had not been confirmed. If the interim certificate dated 05.07.2012, placed before us by the respondent-bank, is held to be a sale confirmation letter, then the order of the DRT, holding that the sale had not been confirmed, would be wholly unjustified.

As the petitioners' valuable rights under the SARFAESI Act would stand violated on non compliance with the statutory provisions under Section 13(2) and (4) of the SARFAESI Act, and Rule 8(1) and (2) of the Rules, we consider it appropriate to set aside the orders

passed by the Debt Recovery Tribunal, to the extent they are subjected to challenge in this writ petition. The matter is remanded to the Debt Recovery Tribunal for its consideration afresh and in accordance with law.

While examining the legal contentions urged on behalf of the petitioners, regarding non-compliance with the statutory provisions, the Debt Recovery Tribunal shall also examine whether or not, in the light of the interim certificate dated 05.07.2012, the respondent-bank was justified in forfeiting 25% of the amount deposited by the auction purchaser by its letter dated 08.06.2016. The parties on either side are permitted, if they so choose, to file additional pleadings and documents within two weeks from today.

Since the S.A, relates to the year 2011 more than 7 years ago, we request the Debt Recovery Tribunal to decide the S.A with utmost expedition and, in any event, not later than three months from the date of receipt of a copy of this order. The parties shall maintain *status quo* as on today till the S.A is finally heard and disposed of by the Debt Recovery Tribunal.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

17th September, 2018
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**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



Writ Petition No.42760 of 2016

Date: 17.09.2018

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