

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

WRIT PETITION NO.8513 of 2018

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent Bank in issuing a e-auction sale notice dated 17.02.2018 published in Indian Express, Visakhapatnam Edition on 18.02.2018 in connection with the petitioner property i.e., Plot No.70, South Part in Ananda Vanam Layout, Ward No.9, Block No.41, S.No.157/12 of Sanghivalasa Village, Bheemunipatnam, Visakhapatnam District, even without issuance of a sale notice as mandatory required under Rule 8(6) of SARFAESI Act 2002 as held by Apex Court in Mathew Varghese v. M.Amritha Kumar and others all are illegal, arbitrary, in violation of law and procedure, principles of Natural Justice by curtailing the constitutional rights of the petitioner under Article 300-A of the Constitution of India includes violation of various rulings of Apex Court and consequently to set aside the e-auction sale notice in the interest of the justice and to pass such other order or orders as this Hon'ble Court may deem fit, just and proper in the circumstances of the case.'

When the case was taken up for hearing on admission, Sri R.Siva Sai Swaroop, learned counsel for the petitioner, contended that the Kanaka Mahalakshmi Co-operative Bank Limited, Visakhapatnam, the second respondent herein, did not follow the due procedure prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), as it failed to issue a notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002), and straightaway proceeded to publish the auction sale notice under Rule 9(1) of the said Rules.

Taking note of this submission, this Court granted interim stay of all further proceedings pursuant to the impugned e-auction sale notice dated 17.02.2018, *vide* order dated 15.03.2018.

Sri Krishna Murthy Devarakonda, learned counsel, entered appearance for the second respondent bank.

The record produced by the said counsel reflects that what is stated to be a notice under Rule 8(6) of the Rules of 2002 was issued on 19.02.2018. Learned counsel would point out that the petitioner received the same.

However, perusal of the notice dated 19.02.2018 demonstrates that no mention was made therein of it having been issued under Rule 8(6) of the Rules of 2002 or that thirty days notice was given to the borrower in terms of the said Rule. Further, the said notice also records that the auction sale notice under Rule 9(1) of the Rules of 2002 was already published in Eenadu and Indian Express Newspapers on 18.02.2018. As a notice under Rule 8(6) of the Rules of 2002 must precede publication of a notice under Rule 9(1) of the Rules of 2002, the notice dated 19.02.2018 cannot be treated as one issued under Rule 8(6) of the Rules of 2002, by any stretch of imagination. Violation of the mandatory procedure prescribed under the provisions of the Rules of 2002, as affirmed by the Supreme Court in *MATHEW VARGHESE v. M. AMRITHA KUMAR*¹, is clearly manifest.

The writ petition is accordingly allowed setting aside the e-auction sale notice dated 17.02.2018 and all the steps taken pursuant thereto. This order shall however not preclude the second respondent bank from initiating measures afresh in accordance with the procedure laid down in

¹ (2014) 5 SCC 610

the SARFAESI Act and the Rules framed thereunder, obtaining as on date, for recovery of its dues.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:10.07.2018

GJ

