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

WRIT PETITION Nos.18987 & 19011 of 2018

COMMON ORDER: (*Per* Hon'ble Sri Justice Sanjay Kumar)

Challenge in these writ petitions was to the action of the Canara Bank in seeking to put to sale the secured assets, belonging to the borrowers, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act) on the ground that the procedure prescribed in that regard was not followed.

2. By separate interim orders dated 11.06.2018 passed in both writ petitions, this Court granted interim stay of the proposed sale scheduled to be held on 20.06.2018. The orders, being identical in terms, read as under:

> " In the light of the admitted facts, it is clear that the notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') was issued on 15.05.2018 stipulating 30 days from the date of notice for payment of the amount, but the sale notice under Rule 9(1) of the Rules of 2002 dated 15.05.2018 was published on 17.05.2018 in newspapers. In the light of the amended provisions of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the right of redemption given to a borrower would expire upon publication of the sale notice under Rule 9 of the Rules of 2002. In effect, the bank only gave two days time under Rule 8(6) for redemption of the property. This is clearly in violation of the statutory mandate of Rule 8(6) of the Rules of 2002 as interpreted by the Supreme Court in **MATHEW VARGHESE V/s. M.AMRITH KUMAR** [(2014) 5 SCC 610].
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> There shall accordingly be interim stay as prayed for."

3. Sri S.Sainathan, learned counsel for the Canara Bank, fairly concedes that in the light of the interim orders granted by this Court, the sale was not held on 20.06.2018. He would however contend that insofar as W.P.No.18987 of 2018 is concerned, the petitioner therein has no *locus* to maintain the writ petition. This argument is advanced on the premise that the petitioner in W.P.No.18987 of 2018 is a sole proprietorship concern represented by its sole proprietor, V.Madhava Reddy, and the properties proposed to be sold in relation to which he raised an issue did not belong either to him or to the proprietorship concern, but to V.Chandra Sekhar Reddy and V.Sudha Rani. Learned counsel would further contend that it was for these persons to come forward and not for the proprietorship concern to fight on their behalf.

4. Sri R.Ramachandra Reddy, learned counsel for the petitioners, would however point out that V.Chandra Sekhar Reddy is none other than the brother of V.Madhava Reddy, the sole proprietor, while V.Sudha Rani is the wife of the sole proprietor. We find this is to be so upon perusal of the impugned e-auction notice.

5. Sri S.Sainathan, learned counsel, would contend that though the definition of 'borrower' under Section 2(f) of the SARFAESI Act would include not only the principal borrower but also the guarantor, the right of redemption under Section 13(8) of the SARFAESI Act would be limited to the actual owner.

6. We however find from a plain reading of Section 13(8) that there is no mention of the term 'borrower' therein and payment of the dues of the secured creditor together with costs, charges and expenses incurred by him being tendered by any person is sufficient to stall the sale or transfer of the secured asset. Therefore, the provision does not contemplate that redemption thereunder should only be made by the owner of the secured asset.

7. In the present case, given the close relationship between the parties and as the proprietorship concern was also shown as the borrower in the impugned e-auction notices, we find merit in the contentions urged by the learned counsel for the petitioners.

8. Insofar as the main issue is concerned, this Court had an occasion to consider the same in **SRI SAI ANNADHATHA POLYMERS V/s. THE CANARA BANK**[1]. In the light of the aforestated decision, the issue stands squarely covered in favour of the petitioners and against the Canara Bank, which was a party thereto.

9. The writ petitions are accordingly allowed setting aside the impugned e-auction sale notices. This order shall however not preclude the bank from initiating action afresh in accordance with the due procedure prescribed under the SARFAESI Act and the Rules framed thereunder, obtaining as on date, for recovery of its

[1] WP.No.8155 of 2018 dated 27.06.2018

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

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 03.07.2018
TJMR