HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD
WRIT PETITION No.19837 of 2018

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

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

> "It is prayed that this Court may be pleased to issue a writ or an order or a direction more particularly a writ in the nature of Mandamus declaring the actions of the Respondent-bank in initiating SARFAESI proceedings against the petitioner without following the clue process of law and subsequently publishing the auction notice before the expiry of the mandatory 30 day period as provided under Rule 86 of SARFAESI Rules, 2002, as arbitrary, illegal, unconstitutional and contrary to the SARFAESI Act and violative of principle of Natural Justice, infringed the fundamental right guaranteed under Articles-14, 191g and 300A of the Constitution of India and consequently, to set aside the paper publication dated 04.06.2018 i.e., the notice U/Rule 91 of SARFAESI Rules and all consequential proceedings and pass such further or other orders as this Hon'ble Court may deem fit and proper in the interest of justice."

By interim order dated 14.6.2018, this Court directed as under:

> "Sri N.B. Benerjee, learned counsel representing Sri B. Praveen Kumar, learned counsel on caveat for the respondent - Corporation Bank, would seek time. As the learned counsel is on caveat, we are of the opinion that he should have been ready to counter the plea of the petitioner for interim relief.
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> In the case on hand, we find that the impugned sale notice does not satisfy the requirements of the amended provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and the Rules made thereunder. A notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), was issued by the Bank on 01.06.2018. While so, a notice under Rule 9(1) of the Rules of 2002 was published in the newspapers on 04.06.2018.
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> In terms of the amended provisions of Section 13(8) of the SARFAESI Act, the right of redemption given to the borrower would expire upon publication of such a notice. However, Rule 8(6) of the Rules of 2002, as interpreted by the Supreme Court in Mathew

Varghese v/s. M. Amritha Kumar [(2014) 5 SCC 610], stipulates that the thirty day notice period mentioned therein is for the purpose of enabling the borrower to redeem his property. Significantly, this provision remains unaltered. Therefore, this statutory notice period of thrty days is sacrosanct and deviation therefrom would curtail the statutory right of redemption available to the borrower. However, in terms of the amended Section 13(8) of the SARFAESI Act, once the notice under Rule 9 (1) of the Rules of 2002 is published, the said right stands extinguished.

In effect, in the case on hand, though the notice under Rule 8(6) of the Rules of 2002 was issued on 01.06.2018 stipulating a thirty day notice period, it is of no practical utility to the petitioners as the opportunity to exercise the right of redemption given to them thereunder stood extinguished on 04.06.2018 when the notice under Rule 9 (1) of the Rules of 2002 was published. Hence, a flagrant violation of the statute is, *prima facie,* manifest.

This aspect of the matter requires further examination given the fact that after amendment of the SARFAESI Act and the Rules of 2002, there seems to be no clarity on the part of banks as to how they should go about complying with the statutory mandate thereunder. Be it noted that the law laid down in Canara Bank v. M. Amarender Reddy [(2017) 4 SCC 735] in the context of the unamended provisions of the SARFAESI Act and the Rules framed thereunder may not hold good in the new regime that has been put in place by such amendments. There shall accordingly be interim stay as prayed for."

Sri L.Ramesh Kumar, learned counsel representing Sri B.Praveen Kumar, learned counsel for respondent No.1, would now inform this Court that the Bank has decided to withdraw the impugned auction notice.

In that view of the matter, the validity of the said notice no longer survives for consideration on merits.

The Writ Petition is accordingly closed. This order shall however not preclude the Bank from initiating measures afresh in accordance with the procedure prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, obtaining as on date, for recovery of its dues.

Pending Miscellaneous Petitions, if any, shall also stand closed. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE T.AMARNATH GOUD

05th July, 2018
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