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

WRIT PETITION No.20489 of 2018

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

Challenge in this writ petition is to the tender-cum-auction sale notice published by the City Union Bank, the respondent, on 07.05.2018. This tender-cum-auction sale notice was issued by the respondent bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), proposing to conduct auction of the petitioner firm's property, which was offered as a security in relation to the loan facilities availed by it, on 20.06.2018.

By order dated 19.06.2018, this Court granted interim stay. This order reads as under:

> "Sri Ambadipudi Satyanarayana, learned counsel on caveat for the respondent – City Union 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 05.05.2018. While so, a notice under Rule 9(1) of the Rules of 2002 was published in the newspapers on 07.05.2018.
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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 thirty 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 05.05.2018 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 07.05.2018 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 Narsimha Rao Gudiseva, learned counsel representing Sri Ambadipudi Satyanarayana, learned counsel for the respondent bank, has no answer as to how the reasoning adopted by this Court in the aforestated interim order falls foul of the legal position. Further, this Court affirmed the very same view, as was taken at the interlocutory stage in this writ petition, in Sri Sai Annadhatha Polymers v. Canara Bank[1].

In that view of the matter, the action of the respondent bank in publishing the auction sale notice without affording full opportunity to the petitioner firm to avail its right of redemption under Section 13(8) of the SARFAESI Act cannot be countenanced.

The writ petition is accordingly allowed setting aside the impugned auction sale notice published by the respondent bank on 07.05.2018. This order shall however not preclude the respondent bank from initiating measures afresh in accordance with the due procedure 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.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

Dt: 06.08.2018.
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[1] W.P.No.8155 of 2018 decided on 27.06.2018