

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * * *

Writ Petition No.20729 of 2018

Between

1. M/s. Concern Readymix, rep. by its Proprietor, Smt. Y. Sunitha Reddy, Shri Y. Santhosh Reddy, R/o. H.No.14-13, Malkajgiri, Hyderabad, Telangana; and another

...Petitioners

and

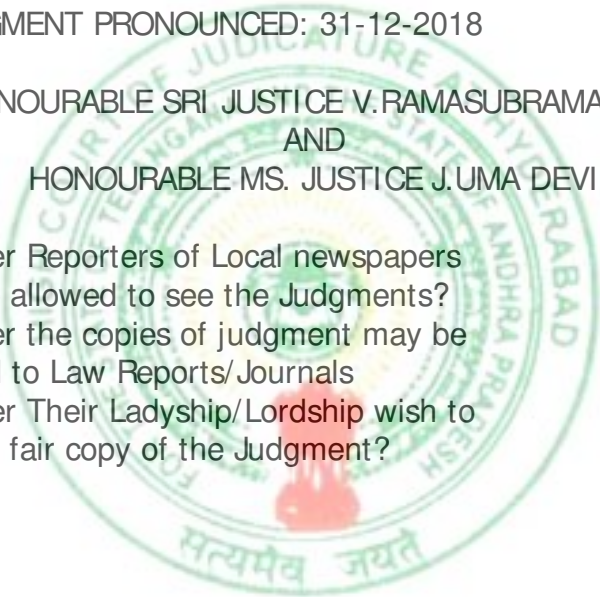
1. The Authorised Officer, Corporation Bank, Zonal Office, 5-9-88/18/88/2, 1st floor, Sapphire Complex, Chappel Road, Hyderabad, Telangana; and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 31-12-2018

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE MS. JUSTICE J.UMA DEVI

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |



* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HONOURABLE MS. JUSTICE J.UMA DEVI

+ WRIT PETITION NO.20729 OF 2018

% Date: 31-12-2018

BETWEEN:

1. M/s. Concern Readymix, rep. by its Proprietor, Smt. Y. Sunitha Reddy, Shri Y. Santhosh Reddy, R/o. H.No.14-13, Malkajgiri, Hyderabad, Telangana.
 2. Smt. Y. Sunitha Reddy, W/o. Shri Y. Santhosh Reddy, R/o. H.No.14-13, Malkajgiri, Hyderabad, Telangana.
- ...Petitioners

Vs.

2. The Authorised Officer, Corporation Bank, Zonal Office, 5-9-88/18/88/2, 1st floor, Sapphire Complex, Chappel Road, Hyderabad, Telangana.
 3. Shri Katam Shyam Kishore, S/o. Late Ashirvadham, R/o. Flat No.201, H.No.6-3-562/10, Erramanzil Colony, Khairatabad, Hyderabad – 82, Telangana.
- ... Respondents

!Counsel for the Petitioners : Mr. C.B. Ram Mohan Reddy

^ Counsel for Respondent No.1 : Mr. Vedula Venkataramana Sr. counsel
Representing Mrs. V. Dyumani

^ Counsel for Respondent No.2 : Mr. Aadesh Varma

<GIST:

> HEAD NOTE:

? Cases referred:

1. AIR 2014 SC 1710
2. (2017) 4 SCC 735
3. (2014) 5 SCC 610
4. 2018 Law Suit (SC) 232
5. 2018(9) MDSC 18

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms JUSTICE J.UMA DEVI

WRIT PETITION NO.20729 OF 2018

ORDER: (per VRS,J.)

Challenging the dismissal of an appeal filed by them under Section 17 of the SARFAESI Act, 2002, the borrower and the guarantor have come up with the above writ petition.

2. We have heard Mr. C.B. Ram Mohan Reddy, learned counsel for the petitioners, Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the 1st respondent-bank and Mr. Aadesh Varma, learned counsel appearing for the 2nd respondent.

3. The case on hand has a checkered history, as can be seen from the following:

a) The 1st petitioner was sanctioned a term loan, way-back in May 2011, for the establishment of a Readymix Concrete Unit. He was also sanctioned a cash credit limit.

b) The 1st petitioner committed default in repayment and the account was classified as NPA on 31.10.2016.

c) Therefore, a demand notice dated 07.11.2016 was issued under Section 13(2). A possession notice was issued on 24.03.2017.

d) Thereafter, a sale notice under Rule 8(6) was issued on 10.07.2017. It was actually a notice under Rule 8(6) as well as notice under Rule 9(1). However, the date of auction was fixed as 18.08.2017, which was beyond 30 days of the date of the notice.

e) Since the auction failed, a fresh notice dated 23.08.2017 was issued fixing the date of auction as 15.09.2017. Since the same also

failed, a fresh notice dated 21.09.2017 was issued fixing the date of auction as 12.10.2017.

f) The third auction also failed forcing the Bank to issue a 4th notice dated 23.10.2017 fixing the date of auction as 16.11.2017. The same also failed and hence a 5th notice was issued on 20.11.2017 fixing the auction on 21.12.2017.

g) The same also failed forcing the Bank to issue a 6th notice on 12.12.2017. The same also failed forcing the Bank to issue a 7th notice on 29.12.2017 fixing the auction on 19.01.2018.

h) Fortunately for the Bank, the auction was successful on 19.01.2018 and the 2nd respondent became the highest bidder for a sum of Rs.3,10,38,000/-.

i) Immediately, the petitioners approached the Debts Recovery Tribunal by way of an appeal under Section 17 of the SARFAESI Act, 2002 in S.A.No.30 of 2018. But before any interim order could be passed by the Debts Recovery Tribunal, a sale certificate was issued by the Bank in favour of the 2nd respondent on 05.02.2018. Therefore, the Debts Recovery Tribunal passed a limited interim order on 05.02.2018 directing the 2nd respondent not to create any third party interest.

g) Eventually, the appeal filed by the petitioners in S.A.No.30 of 2018 was renumbered as S.A.No.159 of 2018 and after hearing both parties, the Debts Recovery Tribunal dismissed the appeal by a considered order dated 08.06.2018. As against the said order, the petitioners have an effective alternative remedy of appeal to the Debts Recovery Appellate Tribunal, but the petitioners have chosen to come up with the above writ petition, by-passing the alternative remedy.

4. The auction sale was challenged by the petitioners before the Tribunal, on three substantial grounds, viz., – (1) that after the amendment to Section 13(8) of the SARFAESI Act, 2002, by the Amendment Act No.44/2016 w.e.f. 01.09.2016, the Authorized Officer was required to give 30 days time from the date of issue of notice under Rule 8(6) before the issue of the sale notice under Rule 9(1), but the 1st respondent issued a single notice under both the rules thereby violating the mandate of law; (2) that the property brought to sale was admittedly an agricultural land and hence Section 31(i) of the Act was attracted; and (3) that though the valuation report taken by the bank way-back in May 2011 showed the market value at Rs.4,62,50,000/- and the valuation report dated 20.05.2017 showed the market value at Rs.6,80,43,555/-, the Bank fixed the reserve price at Rs.3,09,38,000/- thereby violating the law laid down by the Supreme Court in *J. Rajiv Subrahmaniyam v. Pandiyas*¹.

5. The Tribunal rejected the first contention on the basis of the judgment of the Supreme Court in *Canara Bank v. M. Amarender Reddy*². The second contention was rejected by the Tribunal on the basis of an affidavit of the second petitioner himself, submitted at the time of sanction of the loan, that the property was not being used any more as agricultural land and that he will have no objection for proceeding against the property under the SARFAESI Act, 2002. The third contention was rejected on the ground that the Bank had obtained a fresh valuation.

6. In other words, all the three contentions raised by the petitioners to the auction sale, were dealt with by the Tribunal and were rejected for reasons recorded. Once it is found that a quasi judicial

¹ AIR 2014 SC 1710

² (2017) 4 SCC 735

Tribunal created under a special enactment has considered all the issues and arrived at a conclusion for reasons recorded in the order, the role of this Court in writ jurisdiction is extremely circumscribed. It must be remembered that the jurisdiction under Article 226 is a supervisory jurisdiction, to keep the Tribunals and other authorities within their bounds. We are not exercising an appellate jurisdiction over the orders of the Tribunal. We do not find any perversity in the findings of the Tribunal. The legal and factual issues raised by the petitioners have been properly addressed to by the Tribunal. Therefore, even in extreme cases where we may be persuaded to take a different view, we would not.

7. Despite the above restrictions on the scope of our jurisdiction under Article 226, we shall nevertheless deal with all the three contentions raised by the petitioners.

8. The first contention revolves around the non-availability of a gap of 30 days between the date of issue of notice under Rule 8(6) and the sale notice under Rule 9(1). Though certain decisions of this Court and of the Supreme Court are relied upon by Mr. C.B. Ram Mohan Reddy, learned counsel for the petitioners, we shall first take note of the statutory provisions before considering the precedents.

9. Sweeping changes were made to the SARFAESI Act, 2002 by the Enforcement of Security Interest and Recovery of Debts laws and Miscellaneous Provisions (Amendment) Act, 2016 (Act No.44 of 2016). Sub-section (8) of Section 13 was substituted by a new sub-section under this Amendment Act. Actually there are no substantial differences between the unamended sub-section (8) and amended sub-section (8). This can be appreciated if we present sub-section (8) as it stood before the amendment and sub-section (8) as it stands today, in a tabular column.

Section 13(8) before amendment	Section 13(8) after amendment by Act No.44 of 2016
(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.	(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

10. The first distinction between the unamended and amended sub-section (8) of Section 13 is that before amendment, the facility of repayment of the entire dues along with the costs, charges and expenses, was available to the debtor at any time before the date fixed for the sale or transfer. But after the amendment, the facility is available upto the time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty. The second distinction is that the unamended sub-section (8) did not provide for the contingency when the dues are tendered by the borrower before the date of completion of the sale or lease but after the issue of notice. But the

amended sub-section (8) takes care of the contingency where steps have already been taken by the secured creditor for the transfer of the secured asset, before the payment was made. Except these two distinctions, there is no other distinction.

11. Coming to the Rules, Rule 8(6) did not undergo any change under GSR No.1046E, dated 03-11-2016, though certain amendments were made with effect from 04-11-2016 to the Rules, after the amendment of the Act under Act 44/2016. However, Rule 9(1) underwent a change under GSR No.1046E, dated 03-11-2016. The effect of the changes to Rule 9(1) can be best understood if we present the Rule before and after amendment in a tabular column as follows:

Rule 9(1) before amendment	Rule 9(1) after amendment
No sale of immoveable property under these Rules shall take place before the expiry of 30 days from the date on which the public notice of sale is published in Newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.	No sale of immoveable property under these Rules, <i>in first instance</i> shall take place before the expiry of 30 days from the date on which the public notice of sale is published in Newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Provided, further that if sale of immoveable property by anyone of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the Authorised Officer shall serve, affix and publish notice of sale of not less than 15 days to the borrower, for any subsequent sale.

12. Two important amendments have been made to Rule 9(1) by the amendment with effect from 04-11-2016. They are: (i) the words “in first instance” have been inserted in the main part of sub-rule (1) and (ii) a proviso is inserted to make it clear that after the failure of the first attempt, notice of sale for subsequent attempts shall be of a lesser duration.

13. What is important to note both from *the amended and unamended provisions of Section 13(8) and Rule 9(1)* is that *both of them do not speak in express terms, about the equity of redemption available to the mortgagor.* The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. *A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor.* The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in *Mathew Varghese v. M.Amritha Kumar*³, have come to the conclusion as though Section 13(8) speaks about the right of redemption. *The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects.* But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in *Mathew Varghese* that the Supreme Court took note of Section 60 of the Transfer of Property Act and *the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice.* Therefore, we should first understand that the right of redemption is not

³ (2014) 5 SCC 610

lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. *Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned.*

15. Keeping the above distinction in mind, if we come back to the contention with regard to the notice period of 30 days between the publication under Rule 8(6) and the sale under Rule 9(1), it may be seen that the Rules do not contemplate two different notices, one under Rule 8(6) and another under Rule 9(1). We have already extracted both the Rules. Rule 8(6) mandates – (i) the service of a notice of sale on the borrower, (ii) publication of a public notice in two leading Newspapers, of which one should be in vernacular language and (iii) affixture of the notice of sale on a conspicuous part of the immoveable property. This is in addition to the option available to the Authorised Officer under Rule 8(7) to put the notice on the website of the secured creditor.

16. All that Rule 9(1) says is that no sale of immoveable property in the first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in the Newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower.

17. *Rule 9(1) does not stipulate a separate notice to be published. This Rule merely makes a reference to the notice of sale served on the borrower. The words "notice of sale has been served to the borrower" appearing towards the end of the main part of sub-rule (1) of Rule 9, cannot be construed as one more notice of sale, apart from the notice of sale to be served on the borrower under Rule 8(6). If this is so construed, then the borrower should have 60 days time, with the first 30 days following the notice of sale under Rule 8(6) and the second period of 30 days following the notice under Rule 9(1). In fact, the proviso to sub-rule (1) of Rule 9 steers clear of any doubt. The proviso speaks about the failure of the first attempt of the secured creditor. Once the secured creditor fails in his first attempt, then the Authorised Officer should "serve, affix and publish notice of sale of not less than 15 days to the borrower, for any subsequent sale".*

18. *Therefore, the number of notices of sale required to be issued actually depend upon the number of times the property is put to sale. If Rule 9(1) is construed in such a manner as to oblige a secured creditor to issue one more notice apart from the notice under Rule 8(6), the first sale will be preceded by 2 notices and the subsequent sales will be preceded by one notice each. The correct way of looking at the rules is to say that in respect of*

the first auction, there has to be only one notice under Rule 8(6). But the date of the auction should fall beyond 30 days from the date of publication of sale. If no sale takes place on the first occasion, a second notice is mandated only under the proviso to sub-rule (1) of Rule 9 and this second notice shall be of a duration of 15 days. If the second attempt also fails, a third notice may be issued under the proviso to sub-rule (1) of Rule 9, of a duration of not less than 15 days for the third auction.

19. We think that some Courts have been tempted to think that Rule 9(1) requires another notice of sale in addition to the notice of sale served on the borrower under Rule 8(6), due to a mix up. This can be appreciated if we again have a look at Rule 9(1) once more:

“9(1). No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.”

20. What is shown in bold, italics and underlined in Rule 9(1) extracted above, should have come towards the end of Rule 9(1), especially without the words “the proviso to”. If it had come towards the end, without the words “the proviso to”, no confusion would have arisen, about whether a second notice of sale is necessary under Rule 9(1). If the words in bold, italics and underlined, appear towards the end of the Rule 9(1) without the words “the proviso to”, the rule will actually read as follows:

“9(1). No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers or notice of sale has been served to the borrower as referred to in sub-rule (6).”

21. It may be seen from Rule 8(6) that the main part of the sub-rule speaks about service of notice of 30 days to the borrower. The proviso to sub-rule (6) of Rule 8 speaks about the publication of notices in Newspapers. Since Rule 9(1) makes a reference to the proviso to Rule 8(6), in the context of public notice and also since there is no reference to Rule 8(6) in Rule 9(1) (except with reference to the proviso) when it speaks about notice of sale served to the borrower, Courts have come to think that two notices are required to be served on the borrower, one under Rule 8(6) and another under Rule 9(1).

22. In fact, the disjunction between – (i) a public notice of sale as referred to in the proviso to sub-rule (6) of Rule 8 and (ii) a notice of sale served to the borrower, maintained in Rule 9(1) by the use of the word “or”, was explained in *Mathew Varghese* by the Supreme Court. In paragraph-31 of the report, the Supreme Court held in *Mathew Varghese* that this disjunction should be read as a conjunction. The Court said that the word “or” should be read as “and”.

23. The moment the word “or” appearing in Rule 9(1) is read as “and”, there is no scope for concluding that Rule 9(1) requires one more notice to be served to the borrower, in addition to the notice served to the borrower under Rule 8(6).

24. *Though the rule position is as clear as crystal on the above aspect, we do not wish in the present case to take an adventurous path, as the same may fall foul of judicial discipline without a reference to a Larger Bench. For the purpose of this case, let us proceed on the footing that a second notice is required under Rule 9(1) in addition to the notice under Rule*

8(6). Even then the petitioner in this case will not pass the muster. As we have pointed out earlier, the Bank made as many attempts, little less than the number of attempts made by *Ghazni Muhammad*. Every time an auction failed, the Bank served a fresh notice on the borrower and these notices were clearly of a duration not less than the one prescribed in the proviso to Rule 9(1). This can be demonstrated by the dates of notices and dates of sale in a tabular column:

S.No.	E-Auction Notice	Date of Sale
1.	10-7-2017	18-8-2017 (Auction failed)
2.	23-8-2017	15-9-2017 (Auction failed)
3.	21-9-2017	12-10-2017 (Auction failed)
4.	23-10-2017	16-11-2017 (Auction failed)
5.	20-11-2017	11-12-2017 (Auction failed)
6.	12-12-2017	28-12-2017 (Auction failed)
7.	29-12-2017	19-01-2018

25. While the main part of Rule 9(1) is focussed on the sale “*in the first instance*” the proviso focuses on subsequent sales. *Therefore, assuming that there was no compliance of the prescription requiring a second notice under Rule 9(1), the same was more than compensated by 6 subsequent notices of sufficient duration.*

26. The theme of the song of almost all the borrowers, relying upon the decision in *Mathew Varghese* is that if the notice of sale is of a duration of less than 30 days, the right of redemption is lost (though it is not). In other words, the borrowers request the Court to presume that they are honest enough to discharge all the dues, if only 30 days notice had been granted. In this case, the petitioner has had 7 notices and the sale actually materialised only after 5 months of the date of first auction. After the date of first auction, another period of 11 months have passed. *Except Case Law, the bank was unable to recover anything from the borrower.* Therefore, it is

not open to the petitioner to wave the magic wand of *Mathew Varghese*.

27. In any case, the first argument of the learned counsel for the petitioner is about the failure of the Bank to issue a notice under Rule 9(1). If the petitioner was serious about this contention, he should have come up with a writ petition or gone before the Debts Recovery Tribunal by way of appeal challenging the first notice of sale dated 10-7-2017. The petitioner did not challenge the first notice of sale. He did not challenge even the subsequent 6 notices of sale. He came to Court only after the sale was effected on the 7th occasion. Therefore, a person who took advantage of the failure of 6 auctions, cannot come to Court after the completion of a successful auction on the 7th occasion, complaining that the first auction was defective. The impugned sale did not take place pursuant to the first auction notice, but took place pursuant to the 7th notice. Therefore, the defect, even if any, in the first notice, got wiped out. Hence, the first contention deserves to be rejected.

28. The second contention is that the mortgaged property is an agricultural land and that therefore Section 31(i) of the Securitisation Act, 2002, prohibits the invocation of the provisions of the Act, for the enforcement of security interest in an agricultural land. Reliance is placed upon the decisions of the Supreme Court in *ITC Ltd. v. Blue Coast Hotels Ltd.*⁴ and *Indian Bank v. K.Pappireddiyar*⁵. The petitioner has also come up with lot of additional documents such as the report of the Tahsildar of Kapra Mandal, a series of receipts for the purchase of seeds and fertilisers and purchase invoices, not only to show that the property in

⁴ 2018 Law Suit (SC) 232

⁵ 2018(9) MDSC 18

question is an agricultural land but also to show that agricultural operations are being carried on.

29. At the outset, it should be pointed out that the question as to whether the mortgaged property is an agricultural land or not, is actually a question of fact. Therefore, the representations held out by the petitioner at the time when the loan was sanctioned, are material for a decision on the question.

30. It is seen from the legal opinion that the Bank took from their panel lawyer way back on 07-4-2011, while processing the application of the petitioner for sanction of a loan that the question as to whether the property was an agricultural land or not was addressed. The relevant portion of the legal opinion taken by the Bank on 07-4-2011 from their panel lawyer reads as follows:

“Note: The Revenue records and the documents referred above goes to show that the land is agricultural land. However, it appears that there is no agricultural activity and the land is used for non-agricultural purpose. In part of the land, sheds were constructed and the same is assessed to property tax.

However, to avoid any future complications, an Affidavit may be obtained from Ms. Sunitha Reddy stating that she is using the land for non-agricultural purpose and she has no objection, if the Bank proceeds under the Securitisation Act.”

31. Pursuant to the aforesaid legal opinion, the 2nd petitioner gave a Sworn Affidavit on 08-4-2011. It is only thereafter that the petitioners were sanctioned a term loan as well as cash credit limit on 10-5-2011.

32. A person who made a representation of a crucial fact in the form of a Sworn Affidavit and thereby induced a Bank to sanction a term loan, cannot go back on the representation made by him in his Affidavit. If the petitioners had refused to swear to an Affidavit in April, 2011, the Bank would not have sanctioned the facilities at all. After having held out

a particular form of representation to the Bank and after having derived a benefit on account of such representation, the petitioner cannot now turn around and contend that what was made out by him/her was a misrepresentation.

33. A vain attempt was made by the learned counsel for the petitioner to contend that the petitioner had to swear to such an Affidavit in April, 2011, because they were in need of money. But the learned counsel for the petitioner does not want to label the representation made by the petitioners as a misrepresentation, as the same would expose them to other consequences. If the petitioners had made a false representation in order to induce the Bank to sanction limits to them, they cannot go back on those representations, with a view to deprive the Bank of their dues. No amount of Case Law would go to the rescue of such a person. Therefore, the second contention is also liable to be rejected.

34. The third contention revolves around the market value. The contention of the petitioner is that the valuation obtained way back on 22-02-2011 was Rs.462.50 lakhs and that therefore the valuation obtained before the last auction sale was abysmally low. Relying upon the decision of the Supreme Court in *J.Rajiv Subramaniyan v. Pandiyas*, it was contended that the sale of the secured asset should bring the maximum benefit to the borrower and that the secured creditor is expected to take *bona fide* measures to ensure maximum yield.

35. But the fact remains that the Bank had in fact taken a fresh valuation before the last sale. This was referred to by the Debts Recovery Tribunal in paragraph-22 of its order.

36. It is true that the securing of the best possible price by the secured creditor, would be beneficial to both parties. But ideal situations

do not arise in auction sales. The Bank could not get a buyer for the property in 6 auction sales. It was only in the 7th auction that the Bank succeeded. Therefore, the petitioner cannot make an issue out of the valuation report. Therefore, the third contention is also liable to be rejected.

37. In fine, all the three contentions raised by the learned counsel for the petitioner are liable to be rejected. The Debts Recovery Tribunal has applied its mind to all the three contentions and chose to reject them with its own reasons. We do not find any error of law or perversity of finding on the part of the Debts Recovery Tribunal, so as to set aside the order of the Debts Recovery Tribunal. Hence, the writ petition fails and it is dismissed. Pending applications, if any, shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

31st December, 2018.

Js/Ak

Note:-

1. L.R. Copy to be marked.

2. Website.

(B/o)

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HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms JUSTICE J.UMA DEVI

WRIT PETITION NO.20729 OF 2018
(per VRS, J.)



31st December, 2018.
(Ak)