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

WRIT PETITION No.28168 of 2018

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

Challenge in this writ petition is to the e-auction sale notice dated 06.07.2018 issued by the Union Bank of India, which was published in newspapers on 07.07.2018, scheduling the auction of the secured asset belonging to the petitioner on 10.08.2018.

Sri V.V.Ramana, learned counsel for the petitioner, would contend that despite suffering an adverse order on 27.02.2018 in W.P.No.6047 of 2018 in relation to its earlier e-auction sale notice dated 25.01.2018, the respondent bank has not followed the statutory mandate in terms of issuing a notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), and maintaining the statutory period of thirty days prior to extinguishing the right of redemption available to the petitioner under Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act').

Sri Maruthi Jadhav, learned counsel representing Sri B.S.Prasad, learned counsel for the Union Bank of India, would place material before this Court in proof of the petitioner having been served the demand notice under Section 13(2) of the SARFAESI Act and the possession notice under Rule 8(1) of the Rules of 2002 read with Section 13(4) of the SARFAESI Act. Though the learned counsel also placed before this Court a copy of the notice dated 05.07.2018 issued by the bank to the petitioner, we find that the said notice again purports to be one under Section 13(8) of the SARFAESI Act. No reference is made in the said notice to Rule 8(6) of the Rules of 2002 or the statutory period of thirty days in terms of the said

Rule. Further, the notice indicates that the auction would be conducted on 10.08.2018 and the auction notice would be published in the newspapers on 07.07.2018.

In terms of the law laid down by this Court in Sri Sai Annadhatha Polymers v. Canara Bank[1], the right of redemption available to the borrower under Section 13(8) of the SARFAESI Act now stands extinguished upon publication of the sale notice under Rule 9(1) of the Rules of 2002. Therefore, the secured creditor is bound to maintain a full thirty day period after issuance of the notice under Rule 8(6) of the Rules of 2002 before publication of the sale notice under Rule 9(1) thereof.

The material papers produced by the bank demonstrate that the notice dated 05.07.2018, which purports to be one under Section 13(8) of the SARFAESI Act, was dispatched to the petitioner only on 24.07.2018 and delivered to her on 25.07.2018. In effect, the bank failed to maintain a clear thirty day period as stipulated under the statutory scheme. The impugned e-auction sale notice dated 06.07.2018 therefore suffers on counts more than one.

The writ petition is accordingly allowed setting aside the impugned e-auction sale notice dated 06.07.2018 issued by the respondent bank. It is however left open to the bank to initiate measures afresh in accordance with the due procedure obtaining as on date for recovery of its debt.

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: 09.08.2018.
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[1] W.P.No.8155 of 2018 decided on 27.06.2018