**THE HON'BLE SRI JUSTICE SANJAY KUMAR**
**AND**
**THE HON'BLE SRI JUSTICE P.KESHAVA RAO**

**WRIT PETITION NOS.17310 AND 20457 OF 2017**

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

Petitioners and their cause of action being the same in these two writ petitions, they are amenable to disposal by way of this common order.

W.P.No.17310 of 2017 was filed assailing the action of the Andhra Bank (*hereinafter*, 'the bank') in issuing e-auction notice dated 15.05.2017, published in Sakshi Telugu daily newspaper on 16.05.2017, proposing to sell the petitioners' mortgaged properties on 17.06.2017, on the ground that service of the notice dated 21.04.2017 issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'), was not effected. No interim orders were passed in this writ petition and the bank successfully held the auction sale on 17.06.2017. The petitioners thereupon filed W.P.No.20457 of 2017 assailing the sale of their properties to M/s.Venkateswara Hatcheries Private Limited, the third respondent therein. A consequential direction was sought to set aside the e-auction sale held on 17.06.2017.

In the light of the second writ petition assailing the auction sale held on 17.06.2017, pursuant to the e-auction sale notice dated 15.05.2017 impugned earlier, W.P.No.17310 of 2017 has become infructuous, as all the issues raised therein arise for consideration in the later writ petition.

By order dated 28.06.2017 passed in W.P.M.P.No.25054 of 2017 in W.P.No.20457 of 2017, this Court took note of the fact that the validity of the notice issued by the bank under Rule 8(6) of the Rules of 2002 required examination and stayed further proceedings pursuant to the e-auction sale held on 17.06.2017.

Facts, relevant for this adjudication, are as under:

The petitioners availed loan facilities from the bank and mortgaged their properties as security therefor. Default having been committed in the repayment of the loan, the loan account was classified as a non-performing asset and recovery proceedings were initiated by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'). The e-auction sale notice dated 15.05.2017 issued by the bank in this regard is challenged by the petitioners on the ground that the notice dated 21.04.2017 issued under Rule 8(6) of the Rules of 2002 was not served on them as per due procedure. They also pointed out that the said notice dated 21.04.2017 contained the following statement:

> "The date and time of auction and the details of the service provider shall be informed through sale notice which shall be issued separately and the property would be sold to the person who offers highest price."

They further pointed out that the bank also made another statement in this notice, which reads as under:

> "Since, the property may be sold by private sale also or by obtaining quotations from the persons also, subject to terms and conditions acceptable to both of us.
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> If you have any such proposal of selling the property to any person by private sale or by getting quotations, the same may be communicated to me within SEVEN days from date of receipt of this letter/Notice. Failing which it will be

construed that you have no such proposal and I shall proceed forthwith, with sale of the property by E-auction as indicated above.”

On the strength of the aforestated statements, the petitioners contended that the bank wanted to issue another sale notice separately and therefore, the notice dated 21.04.2017 was not issued strictly as a sale notice. They further contended that as the bank itself gave seven days time to them to come forward with a proposal, the notice did not give them a clear thirty days before the date of auction sale, as required by Rule 8(6) of the Rules of 2002, after deducting the seven days. They relied upon **CANARA BANK V/s. M.AMARENDER REDDY**[1] and contended that in terms of the law laid down by the Supreme Court therein, the bank had to mention the mode, date and time fixed for the sale in the notice issued under Rule 8(6) of the Rules of 2002. As the notice dated 21.04.2017 did not fulfil this requirement and the bank undertook therein to furnish these details through another notice to be issued separately, they asserted that it did not qualify as a valid notice and consequently, the auction notice dated 15.05.2017 and the sale held pursuant thereto on 17.06.2017 stood vitiated.

The bank filed a counter through the Assistant General Manager of its Kothapet Branch at Hyderabad. Therein, it stated as follows: The first petitioner company availed two term loans for the purpose of constructing poultry sheds at Kodgal Village, Jadcherla Mandal, Mahabubnagar District. It also applied for open cash credit limit of Rs.1.10 crore. Security was offered for these facilities by mortgaging immovable property. The registered ‘Memorandum of Deposit of Title Deeds’ dated 24.03.2011, bearing Document

[1] (2017) 4 SCC 735

No.1389 of 2011, was executed by them, confirming the extension/continuation of the property security for due repayment of Rs.6.85 crore apart from interest and costs. The loans were also rescheduled by the bank at the request of the petitioners, under sanction letter dated 28.12.2012. Thereafter, default was committed in repayment of the credit facilities granted under various heads, constraining the bank to classify the loan account as a non-performing asset on 30.11.2015. Demand notice dated 01.12.2015 was issued under Section 13(2) of the SARFAESI Act calling upon the petitioners to pay a sum of Rs.3,07,28,292.85 ps., as on 30.11.2015, with interest thereon. No objection/ representation petition was received from the petitioners in response thereto. As the petitioners failed to repay the outstanding dues even thereafter, the bank proceeded further under the SARFAESI Act and issued possession notice dated 04.02.2016. This notice was sent to the petitioners by registered post; affixed on the outer door of the property; and published in two daily newspapers, as contemplated by the Rules of 2002. The bank then secured order dated 15.06.2016 from the Collector and District Magistrate, Mahabubnagar District, under Section 14 of the SARFAESI Act and pursuant thereto, the Tahsildar, Jadcherla, took physical possession of the mortgaged properties on 22.06.2016 and delivered the same to the bank. The bank earlier issued e-auction notice dated 20.08.2016 proposing to sell the petitioners' mortgaged properties on 23.09.2016. Aggrieved thereby, the petitioners filed W.P.No.30728 of 2016 claiming that the mortgaged properties were agricultural lands but this Court held to the contrary and dismissed the writ petition on 20.04.2017.

Negotiations between the parties for settlement of the loan account by way of a One Time Settlement also came to naught. Thereupon, the bank initiated fresh measures for sale of these secured assets. Notice dated 21.04.2017 was issued under Rule 8(6) of the Rules of 2002. This notice was sent to the petitioners' address available with the bank, which is the same as that mentioned in the cause title in the writ petitions. The notice was however returned with the endorsement 'Left', whereupon the bank got the said notice published in two leading daily newspapers, i.e., Andhra Prabha and Hans India, on 04.05.2017. The notice was also affixed on the factory premises of the first petitioner company. Pursuant to this sale notice, the bank issued e-auction notice dated 15.05.2017 proposing to hold the auction sale on 17.06.2017. This notice was also sent to the petitioners by registered post; affixed on the premises of the property; and published in Sakshi Telugu daily newspaper and Times of India English daily newspaper, on 16.05.2017. The bank asserted that all procedural requirements were fulfilled by it in the process of bringing the petitioners' properties to sale and that no cause was made out for interference. The bank accordingly prayed for vacating of the interim order and dismissal of the writ petition.

The third respondent auction purchaser also filed a counter affidavit through its General Manager. Therein, it stated as follows: The mega e-auction sale notice dated 15.05.2017 detailed the petitioners' mortgaged properties at Sl.No.2. These properties were auctioned with a reserve price of Rs.3,92,30,050/-. The third respondent participated in the auction and offered the highest bid of Rs.3,95,30,050/-, which was accepted by the bank. The bank, having received 25% of the bid amount, extended the time for payment of the balance 75% of the sale consideration by thirty days, under its letter dated 01.07.2017. While so, the interim order came to be passed by this Court on 28.06.2017. The third respondent asserted that the sale in its favour was held in accordance with the rules and that there was no illegality therein. The third respondent also prayed for vacating of the interim order, as the same put it to irreparable loss and hardship.

The petitioners filed a reply affidavit reiterating that the notice dated 21.04.2017 was defective and did not meet the mandate of Rule 8(6) of the Rules of 2002. They asserted that the consequential proceedings founded on this notice, including the auction sale held on 17.06.2017, were therefore illegal.

Smt.V.Dyumani, learned counsel for the bank, produced the returned envelopes addressed to the petitioners containing the notice dated 21.04.2017 issued under Rule 8(6) of the Rules of 2002. She also placed on record the relevant original pages of Andhra Prabha and Hans India newspapers dated 04.05.2017, wherein the said notice was published. For the purpose of verification, the envelope bearing the title 'Sale Notice – Rule 6(2)/8(6) of Rules 2002' addressed to Nimma Saritha, the third petitioner, was opened. The subject notice dated 21.04.2017 is found therein. The three envelopes addressed to the three petitioners were returned with the endorsement 'Left'. All of them were addressed to House No.8-2-293/82/J, Plot No.70, Road No.71, Jubilee Hills, Hyderabad–5000034, the same address mentioned by the petitioners under each of their names in the cause title in these writ petitions.

In so far as valid service of this notice is concerned, Rule 3(3) of the Rules of 2002 stipulates to the effect that any other notice in writing to be served on the borrower or his agent by the authorized officer, other than the demand notice under Section 13(2) of the SARFAESI Act, shall be served in the same manner as provided in that rule. Rule 3(1) states that such service should be made by delivery, including hand delivery, or transmitting at the place where the borrower actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgment due, or by speed post, or by courier, or any other means of transmission of documents, like fax message or electronic mail service. The *proviso* to Rule 3(1) stipulates that where the authorized officer has reason to believe that the borrower is avoiding service of the notice or, for any other reason, the service cannot be made as aforesaid, service shall be effected by affixing a copy of the notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

As the petitioners were sought to be served with the notice dated 21.04.2017 by registered post with acknowledgment due at the address available with the bank, which appears to be the correct address going by the cause title in the writ petitions, and as such service could not be effected owing to the envelopes being returned with the endorsement 'Left', the bank took recourse to the *proviso* to Rule 3(1) of the Rules of 2002 and affixed the notice dated 21.04.2017 upon the premises and also resorted to publication thereof in Hans India English newspaper and Andhra Prabha Telugu newspaper, on 04.05.2017. These steps amount to sufficient compliance with the rule and the petitioners are deemed to have been served with the notice dated 21.04.2017.

As regards the petitioners' contention, forcefully projected by Sri R.Siva Sai Swaroop, their learned counsel, to the effect that this notice does not amount to a valid and proper notice under Rule 8(6) of the Rules of 2002, it may be noted that merely because an offer was made to the borrowers to come forward with a proposal for private sale of the property within a time frame, well before the expiry of the thirty days, it would not amount to putting on hold the intention of the bank to sell the property after the stipulated thirty days. This is very clear from the clause in the notice, which has been extracted *supra*, as the authorized officer of the bank stated therein that in the event the petitioners did not respond within seven days, it would be construed that they had no proposal for a private sale and he would thereafter proceed with the sale of the properties by e-auction as indicated by him in the notice. This clause therefore did not have the effect of cutting short the stipulated notice period of thirty days.

As regards the petitioners' contention that the action of the bank in stating that the date and time of the auction would be informed through a sale notice which would be issued separately demonstrates that this sale notice is not a valid one, strong reliance was placed upon **CANARA BANK**[1]. The issue considered by the Supreme Court in this case was whether this Court was right in holding that a secured creditor must put the borrower on separate individual notice prior to deciding on the mode of sale of the secured asset and that such further notice should be in addition to the notice of thirty days' duration to be given by the secured creditor, conveying the intention to put the secured asset on sale. Notice under Rule 8(6) of the Rules of 2002 was issued by the Canara Bank on 15.10.2015 giving the borrower one last and final opportunity to discharge the debt within thirty days therefrom. A copy of the e-auction notice of the same date under Rule 9(1) of the Rules of 2002 was also enclosed along with the said communication, indicating that the date of the sale was fixed as 21.11.2015. The contention advanced by the borrower before this Court was that the e-auction notice dated 15.10.2015 was illegal. Accepting the same, this Court took the view that a separate notice of thirty days' duration ought to have been given by the bank to the borrower before the public notice fixing the date of auction sale was issued, as both the notices could not be issued simultaneously. This Court construed Rule 8(6) of the Rules of 2002 to mean that a notice of intended sale of the secured asset must be de-linked from the actual sale notification to be published in two newspapers. This Court took the view that it was imperative for a secured creditor to put the borrower on notice of thirty days' duration about the intention to sell the secured asset and the mode of the sale and this should precede the issuance of a public notice for sale.

In appeal in **CANARA BANK**[1], considering the legal position, as interpreted in **MATHEW VARGHESE V/s. M.AMRITHA KUMAR**[2], the Supreme Court observed as under:

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[2] (2014) 5 SCC 610

"To put it differently, the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding public auction, notifying the date of sale after 30 clear days from such notice. There is no need to wait for the expiry of 30 days from issuance of notice of intention to sell the secured asset given to the borrower, for publication of a public notice for sale of such asset. Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset. To the above extent, the opinion of the High Court in the impugned judgment will have to be overturned."

Sri R.Siva Sai Swaroop, learned counsel, would rely upon the sentence *"…the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale.."*, in the above paragraph and contend that the notice issued under Rule 8(6) of the Rules of 2002 must itself convey the mode, date and the time fixed for the sale. He would submit that as the notice dated 21.04.2017 clearly recorded that the date and time of the auction would be informed separately, this notice does not meet the requirement of law as spelt out by the Supreme Court.

This argument however merits no consideration.

Rules 8(5) and (6) of the Rules of 2002 read as under:

"8(5): Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:--

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through e-auction mode; or

(d) by private treaty.”

“8(6): The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property".

Rule 9(1) is also relevant and reads as under:

> **"9. Time of sale, issues of sale certificate and delivery of possession, etc.—**
>
> (1) No sale of immovable property under these rules, in first instance 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) of rule 8 or notice of sale has been served to the borrower: ..."

A cumulative overview of the aforestated rules and the statutory scheme envisaged thereunder makes it clear that the authorized officer of the secured creditor shall serve to the borrower a notice of thirty days conveying the intention to sell the immovable secured assets. As per Rule 8(5), such sale can be made by him either by obtaining quotations from persons dealing with similar secured assets or otherwise interested in buying such assets or by inviting tenders from the public or by holding a public auction, including through e-auction mode, or by private treaty. At this stage, the authorized officer is not required to disclose the date of actual sale or the mode thereof. It is merely intimation to the borrower of the intention of the secured creditor to sell the property, giving a clear thirty days notice period.

The *proviso* to Rule 8(6) stipulates that if the sale is intended to be effected by inviting tenders from the public or by holding a public auction, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language, setting out the terms of sale as stipulated in clauses (a) to (f) thereof. It may be noted that the time and place of the sale find mention in clause (d). Rule 9(1) states that when such a notice is published in newspapers, as referred to in the *proviso* to Rule 8(6), the sale of such immovable property cannot take place before expiry of thirty days from the date of such publication or notice of sale has been served to the borrower.

Though the Supreme Court interpreted the word ‘or’ in Rule 9(1) to mean ‘and’ in **MATHEW VARGHESE[2]**, the lawmakers, in their wisdom, while amending this rule with effect from 04.11.2016, *vide* G.S.R.1046(E) dated 03.11.2016, again repeated the word ‘or’ and did not substitute it with the word ‘and’ in terms of **MATHEW VARGHESE[2]**. Therefore, the interpretation of the unamended version of this rule by the Supreme Court earlier may not be applicable to the amended rule. Be that as it may.

Therefore, the details of the time and place of the auction require to be mentioned only in the notice under 9(1) of the Rules of 2002, as per clause (d) in the *proviso* to Rule 8(6) thereof. Rule 8(6), by itself, only speaks of service upon the borrower of a notice of thirty days for sale of the immovable secured assets under sub-rule (5) and no more. It does not state that the authorized officer has to indicate therein the mode that he seeks to take recourse to for sale of such secured assets. This is obviously because an option would still be available at that stage to not only the authorized officer but also the borrower to obtain proposals from third parties and take recourse to Rule 8(5)(d), so that the property in question may be sold privately without further ado.

Though Sri R.Siva Sai Swaroop, learned counsel, seeks to rely upon one sentence in Para 16 of **CANARA BANK[1]**, it is pertinent to note that a later sentence in the very same paragraph puts it beyond doubt that the Supreme Court did not interpret Rule 8(6) to mean that the notice issued thereunder should itself indicate the mode and date fixed for the sale. This is clear from the later sentence: *"Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset"*. Therefore, information with regard to the mode of sale is to be conveyed only by the public notice under Rule 9(1) and not in the initial notice issued under Rule 8(6) of the Rules of 2002. Any interpretation to the contrary would do violence to the clear mandate of the rules. The argument of Sri R.Siva Sai Swaroop, learned counsel, to the contrary is accordingly rejected.

On the above analysis, this Court finds that the bank duly adhered to all procedural norms and no irregularity whatsoever is made out in the sale of the petitioners' mortgaged properties by the bank on 17.06.2017.

W.P.No.17310 of 2017 is accordingly dismissed as infructuous and W.P.No.20457 of 2017, being devoid of merit, is also dismissed. Interim order dated 28.06.2017 passed in W.P.M.P.No.25054 of 2017 in W.P.No.20457 of 2017 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

**SANJAY KUMAR,J**

**P.KESHAVA RAO,J**

**20th FEBRUARY, 2018**
**PGS**