

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

WRIT PETITION NOS.40731 AND 43546 OF 2017

COMMON ORDER
(per Sanjay Kumar,J)

M/s.Nayudamma Granites, Ongole, Prakasam District, a proprietary concern, availed loan facilities to the tune of Rs.30,00,000/- from Syndicate Bank, Ongole, Prakasam District, in 2005. Panditi Rama Devi, the proprietrix of the said concern, offered five immovable properties as security therefor. The said loan account became a non-performing asset and the bank issued demand notice dated 28.02.2007 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), quantifying the dues payable as on 31.12.2006 at Rs.32,49,454/-.

The said loan account was however taken up in a One-Time Settlement (OTS) Adalat and by letter dated 19.12.2008, the bank informed the proprietrix that it was willing to settle for Rs.32,50,000/- against the total dues of Rs.42,50,000/-. She was called upon to pay Rs.10,00,000/- before 29.12.2008 and the rest of the amount before 31.01.2009. Admittedly, she failed to pay the first instalment of Rs.10,00,000/- within the time stipulated. The bank thereupon issued possession notice dated 19.01.2009 under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'). The bank then published auction sale notice dated 07.09.2009 under Rule 9(1) of the Rules of 2002, proposing to put five secured assets to sale on 29.09.2009. By letter dated 25.09.2009, the proprietrix informed the bank that she had found a buyer for the secured assets, who was willing to pay a sum of Rs.34,00,000/-

therefor. She further stated that he had given a cheque for the said sum drawn on Karur Vysya Bank Limited, Ongole, but thereafter sought time till 19.10.2009. She requested the bank not to proceed in the matter till that date. However, the bank conducted the sale on 29.09.2009, as scheduled, and Pavuluri Nageswara Rao, Bayireddy Venu and Mandava Ramesh emerged the highest bidders for four out of the five assets put to sale. The reserve price for all the five assets was Rs.27,50,000/- while the highest bids for the four assets sold aggregated to Rs.26,54,000/-.

Aggrieved by the sale of the secured assets, the proprietrix and the guarantors for her loan filed W.P.No.21402 of 2009 before this Court. By order dated 02.12.2009, this Court relegated them to the alternative remedy under the SARFAESI Act. Thereupon, they filed S.A.No.193 of 2009 before the Debts Recovery Tribunal, Visakhapatnam, (*for brevity*, 'the Tribunal') on 07.12.2009 under Section 17(1) of the SARFAESI Act. By order dated 03.11.2015 passed therein, the Tribunal quashed the auction sale of the four secured assets held on 29.09.2009 and directed the bank to refund the sale proceeds to the respective highest bidders. In the event sale certificates had been issued to them, the Tribunal directed the same also to be cancelled. The highest bidders were directed to handover physical possession of the assets to the bank within a time frame. Lastly, the proprietrix and the guarantors, the applicants in the S.A., were given an opportunity to redeem and get released the secured assets on payment of the dues. The Tribunal took note of the fact that the bank had approved the OTS for a sum of Rs.32,50,000/-, *vide* its letter dated 19.12.2008, and held that revival of the OTS would be justified. The proprietrix and the guarantors were directed to pay Rs.32,50,000/- along with simple interest thereon at 10.5% to the bank from 30.01.2009 till the

date of payment. In the event they did so within thirty days from the date of the order, the Tribunal directed the bank to release the assets to them and return their mortgage deeds-title deeds. In the event they failed to do so, the bank was given liberty to continue with the possession of the assets and recover its dues by taking further action as per rules. In such an event, the bank was directed to publish a fresh possession notice within a time frame. The Tribunal also directed the bank to pay compensation of Rs.5,00,000/- to the proprietrix and the guarantors and the said amount was ordered to be adjusted against their dues.

Aggrieved by the aforestated order, the bank filed W.P.No.4288 of 2016 before this Court. By interim order dated 10.02.2016 passed therein, this Court granted stay of all further proceedings. Thereafter, by order dated 20.04.2016, this Court observed that in the event the borrower wanted to pay the amount pursuant to the direction of the Tribunal, the bank should receive the same. The proprietrix accordingly paid Rs.50,81,875/- by way of demand draft dated 09.02.2016 and the same was acknowledged by the bank, *vide* letter dated 03.05.2016. However, by order dated 28.09.2016, this Court took note of the bank's contention that it had filed the writ petition only due to the fact that the Appellate Tribunal was not functioning at that time due to absence of the Presiding Officer and dismissed the writ petition leaving it open to the bank to avail the remedy of appeal and to claim interim relief during its pendency.

Thereupon, the bank filed Appeal No.78 of 2015 before the Debts Recovery Appellate Tribunal at Kolkata (*for brevity*, 'the Appellate Tribunal'). Similarly, Pavuluri Nageswara Rao and Bayireddy Venu Gopal, two of the three auction purchasers, filed Appeal No.112 of 2016 and Appeal No.8 of 2017 respectively, aggrieved by the order of the Tribunal,

in so far as it quashed the auction sale held on 29.09.2009. By common order dated 23.06.2017, the Appellate Tribunal allowed all the three appeals in part. In so far as the bank's appeal is concerned, the Appellate Tribunal opined that the direction given by the Tribunal to the bank to revive the OTS and accept the amount of Rs.32,50,000/- along with interest was without jurisdiction and set aside the same. Similarly, grant of Rs.5,00,000/- compensation was also held to be unjustified and was set aside. As regards the finding of the Tribunal that the auction purchasers were not entitled to interest as they had enjoyed the assets all along, the Appellate Tribunal opined that there was no fault on their part in purchasing the assets in the irregular sale held by the bank and awarded them simple interest at 5% per annum payable by the bank from the date of deposit till the date of return of the amount.

This common order is subjected to challenge in these two writ petitions. W.P.No.40731 of 2017 was filed by the proprietrix and the guarantors, the applicants in S.A.No.193 of 2009 on the file of the Debts Recovery Tribunal, Visakhapatnam, aggrieved by the said common order in so far as it set aside the direction of the Tribunal to the bank to revive their OTS and allow them to pay the sum of Rs.32,50,000/- along with interest thereon. W.P.No.43546 of 2017 was filed by Bayireddy Venu, the appellant in Appeal No.8 of 2017 before the Appellate Tribunal, aggrieved by the confirmation of the finding of the Tribunal that the sale held on 29.09.2009 was not valid and holding that it was rightly set aside. He was the auction purchaser for the second item of property in the auction sale notice dated 07.09.2009, being an extent of 113 square yards with a two floor building in Plot No.1, Sy.No.222/A/1 of Ongole town, Prakasam District, and his bid amount therefor was a sum of Rs.13,80,000/-.

Heard Sri V.Ravinder Rao, learned senior counsel representing Sri V.N.Anagani, learned counsel for the petitioners in W.P.No.40731 of 2017 and respondents 3 to 6 in W.P.No.43546 of 2017; Sri Naga Praveen Vankayalapati, learned counsel for the petitioner in W.P.No.43546 of 2017 and the third respondent in W.P.No.40731 of 2017; and Sri A.Krishnam Raju, learned counsel for the bank. Pavuluri Nageswara Rao and Mandava Ramesh, the other two auction purchasers, are shown as respondents 4 and 5 in W.P.No.40731 of 2017, but they however chose not to enter appearance before this Court despite service of notice.

Perusal of the order dated 03.11.2015 passed by the Tribunal in S.A.No.193 of 2009 reflects the following salient points:

As regards the maintainability of the securitization application on the ground that the proprietrix had executed two sale deeds-cum-General Power of Attorney in respect of the first item of property sold and that she had no right to maintain any plea in relation thereto, the Tribunal found that as the said transaction had failed due to the vendee thereunder not paying the sale consideration to the bank directly, it did not constitute sufficient ground to non-suit the proprietrix. The Tribunal also found that there was no evidence of the possession notice under Rule 8(1) of the Rules of 2002 having been published as required under Rule 8(2) thereof. More importantly, the Tribunal noted that the auction sale notice dated 07.09.2009 did not maintain a clear thirty days prior to the auction sale to be held, as the said sale was scheduled to be held on 29.09.2009, a mere twenty one days thereafter, and was actually held on that day. Relying upon case law in this regard, the Tribunal held that there was violation of the mandatory procedure prescribed in the Rules of 2002. As regards the alleged delay in the filing of the SA, the Tribunal noted that W.P.No.21402

of 2009 was filed by the proprietrix and the guarantors before this Court and the same was dismissed on 02.12.2009 relegating them to the statutory remedy whereupon they filed the securitization application on 07.12.2009. The Tribunal finally held that the sale conducted on 29.09.2009 was invalid but opined that the auction purchasers were not entitled to any compensation as they had utilized the assets and had not given details of any investments or constructions made by them after their purchase. The Tribunal held that they were only entitled to refund of the sale consideration and no more.

Sitting in appeal over this order, the Appellate Tribunal noted the contention of the bank that the SA was filed beyond time, as the auction sale notice dated 07.09.2009 was subjected to challenge therein but the SA was filed only on 07.12.2009, long after the stipulated forty five days. The proprietrix and the guarantors however pointed out that they filed W.P.No.21402 of 2009 before this Court on 05.10.2009 challenging the auction sale notice dated 07.09.2009 and the writ petition was initially entertained by this Court and an interim order was also passed therein on 07.10.2009, but it came to be dismissed on 02.12.2009 giving them liberty to avail the statutory remedy. They therefore claimed that the period consumed in pursuing the said writ petition has to be deducted while computing the limitation of forty five days. The Appellate Tribunal considered the decision of the Supreme Court in *BALESHWAR DAYAL JAI SWAL V/ s. BANK OF INDIA*¹ and opined that Section 14 of the Limitation Act, 1963, would have application to proceedings under the SARFAESI Act and excluded the time consumed in pursuit of the writ petition. The Appellate Tribunal further found that upon exclusion of this

¹ (2016) 1 SCC 444

period, the SA was within time. As regards invalidation of the sale held on 29.09.2009, the Appellate Tribunal observed that one ground was sufficient to uphold the order of the Tribunal holding so, i.e., the clear violation of the mandate of Rule 9(1) of the Rules of 2002. Referring to case law in this regard, the Appellate Tribunal confirmed the finding of the Tribunal that the sale was liable to be set aside. Lastly, dealing with the direction of the Tribunal to the bank to revive the OTS offered under the letter dated 19.12.2008, the Appellate Tribunal observed that as the terms of such OTS had not been adhered to within the stipulated time, it had lapsed and revival of a settlement, in any event, would be between the bank and the borrower. The Appellate Tribunal accordingly held that the Tribunal had no jurisdiction to direct the bank to revive the OTS and set aside the direction in that regard. The Appellate Tribunal also found that there was no justification for grant of compensation of Rs.5,00,000/-. Relief was granted by the Appellate Tribunal to the auction purchasers by grant of interest, as set out *supra*.

Sri V.Ravinder Rao, learned senior counsel, would contend that in the light of the law laid down by the Supreme Court in *SARDAR ASSOCIATES V/ s. PUNJAB & SIND BANK*², the Appellate Tribunal was not correct in setting aside the direction of the Tribunal to revive the OTS offered under the letter dated 19.12.2008. Perusal of the cited judgment however reflects that the issue before the Supreme Court was altogether different. The Supreme Court considered the binding nature of circulars and guidelines issued by the Reserve Bank of India in relation to one-time settlements. In this context, the Supreme Court observed that as per Section 21 of the Banking Regulation Act, 1949, the Reserve Bank of

² (2009) 8 SCC 257

India is entitled to formulate policies which the banking companies are bound to follow. In that case, the respondent bank failed to abide by the directions of the Reserve Bank of India and floated its own circular in relation to an OTS scheme and rejected the offer made by the borrower, the appellant before the Supreme Court. It was in this context that the Debts Recovery Appellate Tribunal was held to have jurisdiction to consider the prayer made by the borrower for an OTS in view of the fact that the same was within the purview of the scheme formulated by the Reserve Bank of India. Thus, that was a case where the concerned bank did not abide by the directives of the Reserve Bank of India and came up with its own guidelines in relation to an OTS scheme and the Debts Recovery Appellate Tribunal had jurisdiction to direct the bank to abide by the binding mandate of the Reserve Bank of India.

The case on hand, however, does not present comparable facts. It is admitted by Sri V.Ravinder Rao, learned senior counsel, that when the bank offered an OTS under its letter dated 19.12.2008, it categorically stipulated that out of the reduced sum of Rs.32,50,000/-, as against the total dues of Rs.42,50,000/-, the proprietrix had to pay Rs.10,00,000/- before 29.12.2008 and the rest before 31.01.2009. Learned senior counsel also admits that the proprietrix failed to make the initial deposit of Rs.10,00,000/- by 29.12.2008. Though he would contend that the bank ought to have stayed its hand till expiry of the entire period i.e. up to 31.01.2009, we are not persuaded to agree. Once the proprietrix failed to obey the first directive, i.e., depositing Rs.10,00,000/- by 29.12.2008, the OTS failed on that day itself and there was no necessity for the bank to wait till 31.01.2009, the date stipulated for payment of the balance amount. It may also be noted that the auction sale notice was issued by

the bank long thereafter, on 07.09.2009. In terms of the said notice, the dues stood at Rs.32,49,454/- as on 31.12.2006 and interest had to be calculated thereon from the said date. Therefore, the amount settled upon, *vide* the letter dated 19.12.2008, would not remain frozen and more so, when the proprietrix failed to take advantage of the same. The Tribunal therefore ought not to have directed the bank to revive the said OTS, nearly nine years later. Further, as rightly held by the Appellate Tribunal, it is not within the province of the Tribunal to impose a settlement upon the bank. Any such settlement would have to be in terms of stipulated guidelines and norms and cannot be as per the whims and fancies of the Tribunal, which is empowered only to test the validity of measures taken under Section 13(4) of the SARFAESI Act. We therefore find no error having been committed by the Appellate Tribunal in setting aside the direction of the Tribunal to the bank to revive the OTS dating back to 19.12.2008.

As regards the contention of Sri Naga Praveen Vankayalapati, learned counsel, that the SA was time-barred, we find no error having been committed by the bank in holding that Section 14 of the Act of 1963 would have application to proceedings under the SARFAESI Act. It is not in dispute that the proprietrix and the guarantors approached this Court in the first instance and only after dismissal of their writ petition relegating them to the statutory remedy, they filed the subject SA before the Tribunal on 07.12.2009. Exclusion of the period consumed in pursuit of the writ petition before this Court would bring the SA within time as it would be less than forty five days, the time stipulated under Section 17(1) of the SARFAESI Act. The SA was therefore not barred by time.

As regards invalidation of the auction sale, Sri Naga Praveen Vankayalapati, learned counsel, does not dispute the fact that the sale was held in violation of the mandate of Rule 9(1) of the Rules of 2002. Given the edict of the Supreme Court in MATHEW VARGHESE V/ s. M. AMRITHA KUMAR³, such a statutory violation would be fatal if there is no scope for inferring any waiver, as in the case on hand. There is no possibility of saving such an auction sale and the findings of the Tribunal and the Appellate Tribunal holding to this effect do not warrant interference.

On the above analysis, this Court finds that the order of the Appellate Tribunal, under challenge in both these writ petitions, is valid and correct on facts and in law. No grounds are made out to interfere with the same.

Both the writ petitions are therefore devoid of merit and are accordingly dismissed. The bank is discharged from the undertaking given to this Court on 02.12.2017 and is at liberty to proceed in the matter in accordance with the due procedure, obtaining as on date, in terms of the SARFAESI Act and the Rules of 2002. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

26th JULY, 2018

PGS

³ (2014) 5 SCC 610