IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.02.2019

CORAM :
THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. Nos.23638 and 23639 of 2014 and
M.P.Nos. 1 & 2 of 2014 (4 MPs)

1 Mr.L.Ashok Chand
2 Mahaveer Chand Jain
3 Shanthi Devi
4 Loon Chand Jain .. Petitioners in both WPs

v.

1 Authorised Officer and Chief Manager
Indian Bank
Asset Recovery Management Branch II
No.55, Ethiraj Salai
Egmore
Chennai - 600 008

2 J.M.School
Run by The Jumma Masjid
Rep by its Secretary
Mr.Mohamed Sikkander
No.49, Ponnappa Street
Purasawalkam
Chennai - 600 084

3 Heavens Park Trading Company
Rep by its Partner
Mr.Abdul Khader
No.16/35, Sundaram Street
Purasawalkam , Chennai - 600 007

4 The Official Liquidator (Law)
The Official Liquidator Office
High Court , Madras ... Respondents in both WPs

W.P.No.23638/2014 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records in R.A. (SA) No.19/2013 on the file of the Debt Recovery Appellate Tribunal, Chennai in connection with the impugned order dated 12.2.2014 and quash the same.

W.P.No.23639/2014 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the records in R.A. (SA) No.17/2013 on the file of the Debt Recovery Appellate Tribunal, Chennai in connection with the impugned order dated 12.2.2014 and quash the same.

For Petitioners : Mr.K.A.Ramakrishnan

For Respondents : Mr.T.Sundar Rajan- for R1

Mr.Omprakash, counsel - for R2 & R3
for M/s.Ramalingam & Associates

Mr. M.Dhamodharan - for R4

COMMON ORDER

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAISWAMY,J.)

The petitioners have filed the above Writ Petitions to issue Writs of Certiorari to call for the records in R.A. (SA) Nos.17 and 19 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai in connection with the impugned orders dated 12.2.2014 and to quash the same.

2. Since the issues involved in both the Writ Petitions are common, the Writ Petitions are disposed of by this common order.

3.1 According to the petitioners, they are the owners of the property measuring an extent of 10 grounds and 1942 sq.ft. comprised in Old R.S.No.1526 and 1527 part, situated in Ponnan Street, Purasawalkam Village, Chennai - 600 007. M/s. Pan Clothing and Consolidated Company Limited, availed loan from the respondent No.1/Bank and the petitioners stood as guarantors. Since the borrower committed default in repaying the loan amount, the respondent No.1/Bank initiated recovery proceedings in O.A.No.335 of 2001 before the Debts Recovery Tribunal-I, Chennai. Subsequently, the same was transferred to Debts Recovery Tribunal-II, Chennai and re-numbered as O.A.No.169 of 2007 for recovery of a sum of Rs.3,68,49,624/- with future interest.

3.2 The Debts Recovery Tribunal, decreed the OA in favour of the Bank. Aggrieved over the same, the petitioners preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai.

3.3.The respondent No.1/Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI'') and issued a notice dated 01.01.2005 under section 13(2) of SARFAESI Act and thereafter, the respondent

No.1/Bank issued Possession Notice dated 30.08.2005 under section 13(4) of SARFAESI Act. Thereafter, respondent No.1/Bank issued Tender-cum-Sale notice dated 28.12.2010 fixing the sale on 31.01.2011 and fixed the reserve price at Rs.5 crores.

3.4 In the auction held on 31.01.2011, the respondent Nos. 2 and 3 were the successful bidders and the sale was confirmed in their favour. Challenging the sale held on 31.01.2011, the petitioners have filed an appeal in S.A.No.57 of 2011 before the Debts Recovery Tribunal-III, Chennai and the Debts Recovery Tribunal, by order dated 10.01.2013, allowed the S.A.No.57 of 2011 and set aside the sale held on 31.01.2011 and also the Sale Certificate dated 09.04.2011 issued in favour of the respondent Nos. 2 and 3.

3.5 Challenging the order passed by the Debts Recovery Tribunal-III, Chennai, the Bank filed appeal in R.A.(SA) No.17 of 2013 and the auction purchasers-respondent Nos.2 and 3 have filed appeal in R.A.(SA) No.19 of 2013 before the Debt Recovery Appellate Tribunal, Chennai. The Debt Recovery Appellate Tribunal, by two separate orders dated 12.02.2014, allowed both the appeals and set aside the order passed by the Debts Recovery Tribunal. Aggrieved over the orders passed by the Debt Recovery Appellate Tribunal, the petitioners have filed the above Writ Petitions.

4.1 The contentions of Mr.K.A.Ramakrishnan, learned counsel appearing for the petitioners are as follows:-

(i) In the counter filed before the Debts Recovery Tribunal, the respondent No.1/Bank has stated that the sale was confirmed in favour of the respondent Nos. 2 and 3 on the date of auction itself i.e. on 31.01.2011, when the auction purchasers have not paid the entire sale consideration.

(ii) The auction purchasers have paid the initial amount of Rs.15 lakhs by way of cheque and not by way of DD/BPO, which is against the terms of the Tender dated 28.12.2010.

(iii) The upset price fixed by the respondent No.1/Bank was very low.

4.2 The learned counsel appearing for the petitioners, in support of his contentions, though filed a compilation of citations, he has referred to only the following two judgements:

(i) AIR 1995 Supreme Court 2195 [Rao Mahmood Ahmed Khan v. Shri Ranbir Singh and others] wherein the Hon'ble Supreme Court held as follows:-

> " 8. It may be noted that similar provisions are contained in the Code of Civil Procedure, 1908 also. Order 21, Rule 84 of the Code is almost similar in terms to Rule 285-D of the Rules in question which provides for deposit of 25 per cent of the bid amount immediately and on failure to do so re-sale of the property

forthwith. Order 21, Rule 85 and 86 of the Code are similar to Rule 285-E of the Land Reforms Rules requiring the purchaser payment of the full amount of the purchase money before the court closes on the 15th day from the date of sale of property and in the event of default to do so the property shall be re-sold with the only distinction that in the case of default under Order 21, Rule 86 the Court has the discretion to forfeit to the Government 25 per cent of the bid amount deposited on the date of sale while in the case of default under Rule 285-E of the Land Reforms Rules there is no such discretion but in the event of default to deposit the full amount of purchase money, 25 per cent deposit has to be forfeited after defraying the expenses of re-sale. Similarly the provisions contained in Order 21, Rule 87 of the Code are similar to the provisions contained in Rule 285-G of the Land Reforms Rules.

13. The question now remains to be considered is whether the deposit of 25 per cent of the bid amount by the purchaser respondent No. 1 herein by cheque instead of cash would be a valid deposit within the meaning of Rule 285-D of the Rules. Admittedly the respondent No. 1 was declared purchaser of the property in question on 18.10.1973. According to the learned counsel for the appellants neither the deposit of 25 per cent of the bid amount was made in cash nor by cheque on 18.10.1973 as the cheque was encashed on 22.10.1973. While according to the learned counsel appearing for the auction purchaser respondent No. 1 the cheque was tendered on 18.10.1973 itself which was encashed on 22.10.1973 and the amount was deposited in the Government treasury on 22.10.1973. The question is whether such a payment by cheque could be regarded as a valid deposit within the, meaning of Rule 285-D. As discussed above Rule 285-D is a mandatory rule according to which if 25 per cent of the bid amount is not deposited immediately the land shall forthwith be again put up and sold. In other words on the failure of the purchaser to deposit 25 per cent of the bid amount immediately the land shall be re- sold immediately the land shall be re- sold immediately after such failure the very same day. If for instance the 25 per cent of the bid amount

is accepted by cheque and subsequently the purchaser changes his mind and advises his banker not to encash the cheque or there is no amount in the account of the purchaser in the bank and the cheque is bounced, the purpose of Rule285-D would be frustrated and thus the mandatory provision would be rendered nugatory. The result would be that neither the authorities would be in a position to forfeit any amount of the purchaser nor the authority would be in a position to defray the expenses of the sale as contemplated by Rule 285- E. The other consequence that will follow is that the re- sale of land will have to be delayed and a fresh proclamation for sale has to be issued as provided by Rule 285-G. It, therefore, appears to us that Rule 285-D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory rule 285-D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule. This was also the view taken by a Division Bench of the Allahabad High Court in the case of Hira Lal (supra) and the Learned Single Judge was not right in ignoring the said view by observing that it was obiter. The High Court of Madhya Pradesh in M/s.Progressive Industrial Enterprises v. Bank of Baroda [A.I.R. 1989 M.P. 177] also expressed the view that deposit of 25 per cent of the bid amount by cheque which was not encashed on the date on which the person was declared purchaser but on a later date, there was no compliance of Order 21 Rule 84 (C) C.P.C."

(ii) 2010 (2) L.W.666 [C. N. Paramasivam and another v. Sunrise Plaza and 4 others] wherein the Division Bench of this Court held as follows:-

"17. Rule 57 of Second Schedule to Income-Tax Act, 1961 is a mandatory Rule directing a deposit of 25 per cent on the amount of the purchase money immediately on being declared to be the purchasers and it does not contemplate any payment by cheque but a cash deposit of 25 per cent of the purchase money and hence part payment of deposit of 25 per cent of the purchase money by cheques will not be a valid tender within the meaning of the Rule and there was no compliance of Rule 57(1) as well as the Conditions of auction sale.

21. A Division Bench of the Bombay High Court in the decision in NARAYAN KARWA'S CASE [2008] 296 ITR 545) considered Rule 57 of Second Schedule of Income-Tax Act, 1961 and held that failure to deposit the entire purchase money on or before the fifteenth day from the date of sale not only renders the sale invalid but also renders the 25 per cent purchase price deposited on the date of auction liable to be forfeited. For better appreciation, the relevant portion of the above decision is extracted below.

> "However, in the present case, it is an admitted fact that respondent No.4 has failed to deposit the entire purchase price within the time stipulated under the Act. According to the petitioners, failure to deposit the entire purchase price within the stipulated time, not only renders the sale invalid but also renders the 25 per cent deposit made on the date of auction liable to be forfeited.
>
> It is not necessary for us to go into the question as to whether the failure on the part of the auction purchaser to deposit the entire purchase price within the stipulated time renders the 25 per cent purchase price deposited on the date of auction sale liable to be forfeited. Suffice it to say that the order of the Tax Recovery Officer in confirming the auction sale on July 11, 1991, is wholly unjustified because, in the present case, respondent No.4 has not deposited the entire purchase price on or before the fifteenth day from the date of sale, in spite of the specific provision contained in rule 57 of the Second Schedule to the Act and in spite of specific clause No.24 contained in the terms and conditions of sale.

5. Countering the submissions made by the learned counsel appearing for the petitioners, the respective learned counsel appearing for the respondents submitted that the respondent Nos. 2 and 3/auction purchasers have submitted their tender quoting a sum of Rs.5 crores and after opening the tender on 31.01.2011,

the respondent No.1/Bank negotiated with the respondent Nos. 2 and 3 for increasing the bid amount for the reason that there was no other bidder available on that day and the auction notice was issued for the second time. Further, the learned counsel submitted that the respondent Nos. 2 and 3 have tendered 25% of the bid amount of Rs.5 crores by way of DD and cash and for the enhanced amount of Rs.60 lakhs, they tendered Rs.15 lakhs by way of cheque. Therefore, according to the learned counsel for the respondents, there is no violation of the terms and conditions by the auction purchasers. Further, the learned counsel submitted that on 31.01.2011, the auction purchasers, were only declared as successful bidders and the sale was not confirmed in their favour on that day, which is evident from the letter dated 31.01.2011 given by the respondent No.1/Bank to the auction purchasers. With regard to the valuation, the learned counsel for the respondents submitted that the upset price of the property was fixed at Rs.5 crores based on the valuation report. Further, the learned counsel for the respondents contended that the petitioners themselves had sold the property to an extent of 6.9 grounds in the same survey number to the respondent No.2 for a sum of Rs.53,11,636/- under 8 separate sale deeds by valuing the property at Rs.7.69 lakhs per ground.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the first contention raised by the learned counsel appearing for the petitioners with regard to confirmation of sale is concerned, the said contention cannot stand for the reason that by letter dated 31.01.2011, the respondent No.1/Bank informed the auction purchasers/respondent Nos. 2 and 3 that they are declared as successful bidders with the quote made by them for a sum of Rs.5.60 crores in respect of sale of the properties. Though the respondent No.1/Bank has filed their counter before the Debts Recovery Tribunal stating that the sale was confirmed on 31.01.2011, in view of the letter dated 31.01.2011, which is annexed at page No.240 of the typed set of papers filed by the petitioners, it should be taken that the respondent Nos. 2 and 3 were only declared as successful bidders on 31.01.2011 and the sale was not confirmed on that day. Therefore, the first contention raised by the petitioners is rejected.

7.1 The second contention raised by the petitioners is with regard to payment of initial amount of Rs.15 lakhs by way of cheque and not by way of DD/BPO. From the materials available on record, it could be seen that the respondents Nos. 2 and 3 have submitted their bid for a sum of Rs.5 crores. They were also having 25% of the said amount i.e. Rs.1.25 crores by way of DD and cash. When the tender was opened by the respondent No.1/Bank, since there was no other bidder available on 31.01.2011, they negotiated with the respondent Nos. 2 and 3 and increased the bid amount from Rs.5 crores to Rs.5.60 crores. It is pertinent to note that out of 7 bidders, who have participated in the auction on 31.01.2011, 6 bidders have withdrawn their bids even before the auction and only the respondent Nos.2 and 3 have participated in the auction. Earlier, the respondent No.1/Bank issued a sale notice dated 28.12.2010 for the sale of the property, however, the sale was not conducted. For the enhanced amount of Rs.60 lakhs, one cannot expect the auction purchasers to have a Demand Draft and tender the same before the respondent No.1/bank. The auction purchasers tendered a sum of Rs.1.25 crores by Demand Draft and cash and paid 25% of the enhanced amount, i.e. 25% of Rs.60 lakhs = Rs.15 lakhs by cheque. If the auction purchasers had tendered the entire amount by way of cheque, then, it can be construed as violation of tender condition. But, in the case on hand, so far as the bid amount is concerned, they tendered 25% of the same by demand draft and cash. They tendered the cheque only in respect of the enhanced amount, which they came to know only at the time of opening of the tender. That apart, Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 does not specify that the payment should be made by demand draft or cash. For the reasons stated above, payment of Rs.15 lakhs by cheque on the date of auction shall not vitiate the auction in any manner.

7.2 As already stated, the auction took place on 31.01.2011 and the respondent Nos. 2 and 3 were declared as successful bidders on 31.01.2011 and the sale was confirmed on 04.02.2011. This was also communicated to the respondent Nos. 2 and 3 by the respondent No.1/Bank and the communication was received by them on 07.02.2011. Since the auction purchasers had deposited the balance 75% of the amount, the Debt Recovery Appellate Tribunal has rightly held that Rule 9(4) of the Security Interest (Enforcement) Rules had not been contravened by the Authorised Officer.

8. The last contention raised by the learned counsel appearing for the petitioners i.e. with regard to upset price fixed by the respondent No.1/Bank is concerned, it is pertinent to note that the respondent No.1/Bank had fixed the upset price based on the Valuation Report dated 13.08.2010. As per the said Valuation Report, the value of the land was fixed at Rs.49 lakhs per ground. It is also pertinent to note that the petitioners themselves have sold an extent of 6.9 grounds in the same Survey Number to Jumma Masjid by way of 8 separate sale deeds for a sum of Rs.53,11,636/- (i.e.) Rs.7.69 lakhs per ground in the year 2005 whereas, the Bank has valued the property at Rs.49 lakhs per ground in the year 2010. Having sold the property for a sum of Rs.7.69 lakhs per ground in the year 2005, the petitioners cannot contend that the value of the

land fixed at Rs.49 lakhs per ground in the year 2010 is very low. The claim made by the petitioners can only be exaggerated value in view of their own sale deeds executed in favour of the respondent No.2.

9. In these circumstances, we are of the considered view that the respondent No.1/Bank followed the procedures laid down under the Security Interest (Enforcement) Rules and conducted the sale.

10. For the reasons stated above, we do not find any reason to interfere with the orders passed by the Debt Recovery Appellate Tribunal in R.A. (SA) Nos.17 and 19 of 2013 . Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Debt Recovery Appellate Tribunal
Chennai

2.Authorised Officer and Chief Manager
Indian Bank
Asset Recovery Management Branch II
No.55, Ethiraj Salai
Egmore, Chennai - 600 008

3.The Official Liquidator (Law)
The Official Liquidator Office
High Court, Madras

+2ccs to Mr.K.A.Ramakrishnan, Advocate, S.R.No.15813 & 15814
+1cc to Mr.T.Sundar Rajan, Advocate, S.R.No.15777
+1cc to Mr.M.Dhamodharan, Advocate, S.R.No.15634
+4ccs to M/s.Ramalingam Associates, S.R.No.15791 & 15792.

W.P. Nos.23638 and 23639 of 2014 and
M.P.Nos. 1 & 2 of 2014 (4 MPs)

RR(CO)

rrs 15/03/2019