IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-11-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.20867 OF 2019

1.M/s.Sri Venkateswara Associates,
rep.by its sole Proprietor Mr.V.Venkateswarlu

2.Mr.V.Venkateswarlu

3.Mrs.V.Manorama ... Petitioners

-vs-

1. The Chief Manager and Authorised Officer,
Indian Bank, Jafferkhanpet Branch,
119/1, Zenofer Tower,
Jawahrlal Nehru Salai,
Jafferkhanpet,
Chennai-600 083.

2. Mr.Rajesh Kumar

3. Mr.R.Agasthi ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Order, dated 23.05.2019, passed in RA (SA) 189 of 2017 by the Debt Recovery Appellate Tribunal, Chennai, and quash the same.

For Petitioners : Mr.B.K.Girish Neelakandan

For Respondent 1 : Mrs.S.R.Sumathy

For Respondents 2 & 3 : Mr.R.K.M.Suresh

ORDER
(By Dr.Vineet Kothari,J.)

The Borrowers-M/s.Sri Venkateswara Associates and two other petitioners have challenged by way of the present Writ Petition the order passed by the Debt Recovery Appellate Tribunal, Chennai, on 23.05.2019, allowing the appeal of the appellant-Indian Bank and setting aside the order passed by the Debt Recovery Tribunal-I, Chennai, dated 18.07.2017, in S.A.No.03/2017.

2. The learned DRAT has upheld the Sale and Sale Certificate in favour of the Auction Purchasers by the impugned order herein. The relevant observations of the learned DRAT in the impugned order are quoted below for ready reference :

> "10. On 31.10.2016 and on 1.11.2016, Auction Purchasers of Item Nos.1,2 & 3 properties requested the Appellant Bank to extend the time for next 15 to 20 days to pay the balance 75% of sale consideration and on 3.11.2016, Authorised Officer of Bank sent a letter to Zonal Officer for extension of time. On 08.11.2016, the Security Enforcement Committee had approved for extension of time for 15 days. On 15.11.2016, Auction Purchasers further sought time for payment of 75% of balance sale amount mainly because of demonetisation. Ultimately, Zonal Officer had extended the time for payment of balance money till 10.1.2017. On 31.12.2016, entire sale consideration was remitted by the Auction Purchasers.
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> 11. In this backdrop, R1 to R3 preferred the SARFAESI Appeal on 7.1.2017 challenging the Sale Notice dated 8.9.2016. Virtually they challenged the actual sale also, but without any deposit of the actual due amount or amount equal to sale consideration. If from the date of Sale Notice limitation is calculated, then any such type of Sale Notice should have been challenged within 45 days. Sale Notice was issued on 8.9.2016. In such a situation, SARFAESI Appeal should have been preferred in month of October,2016 itself. If at all it is preferred after conclusion of sale, then, R1 to R3 are duty bound to make a deposit of the entire due amount or sale consideration, at least, whichever is less.
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> 12. In so far as defect in service of Sale Notice is concerned, it has been served by Registered Post on R1 to R3 borrowers and acknowledgement had

been received by Bank. On 10.9.2016, borrowers had received the Sale Notice in person. Sale Notices have been published on 11.9.2016 in English and vernacular language newspapers.

13. Record further reveals that time had not been extended by the Authorised Officer of Bank. Rather he had forwarded the matter to the concerned Committee and, in fact, secured creditor/lender had extended the time period. Admittedly, on 8.11.2016, demonetisation took place and in all fairness, judicial notice also has been taken note of the fact that bonafides of the person should be assessed considering the difficulties in mobilisation of cash and the difficulties were not under the control of anybody.

14. In nutshell, on 8.9.2016, Sale Notice was issued. It was served on borrowers through Registered Post and by publication also. Auction was held on 14.10.2016. Entire sum was paid by Auction Purchasers within a period of three months despite the fact of demonetisation and time was extended not by Authorised Officer, but by the Committee constituted by the secured creditor/lender. Even otherwise also, any such extension of time, at least in new rules, will not be a problem for defaulter. At least for such type of defaulter, who failed to comply the conditional order passed in earlier SARFAESI Appeal and never remained interested in timely payments.

15. Interest of third party bonafide purchasers also should be respected. If sale is conducted in a transparent manner by E-Auction and three different persons purchased three different properties, then, there remains negligible chances of manipulation.

16. According to borrowers, sale proceeds of Item No.3 property was appropriated in loan account on 7.12.2016. For Item No.1 property, appropriated on 5.1.2017, and for Item No.2 property, appropriated on 13.1.2017. Time was extended not by the Authorised Officer, but by the Committee. In such backdrop, impugned order deserves to be and is hereby set aside.

17. Appeal stands allowed. Sale and Sale Certificate are hereby affirmed. Consequently, all pending IAs stand closed and disposed of.”

3. Mr.B.K.Girish Neelakandan, learned counsel for the petitioners, has urged before us that the learned DRAT has erred in holding that extension of time allowing the Auction Purchasers to pay the remaining price of the property purchased by them besides 25% of the Reserve Price paid by them at the time of auction was proper, which was not done by the competent Committee of the respondent-Bank, but was only by the Authorised Officer, which is contrary to the guidelines issued by the respondent-Bank itself on 03.12.2012. He submitted, that in the absence of proper authorisation from the said Committee, the extension of time beyond three months, as stipulated in Rule 9 (4) of the Security Interest (Enforcement) Rules,2002, was illegal and fatal to the auction proceedings. He drew our attention to the Communication, dated 03.11.2016, and also a letter, dated 16.11.2016, of the respondent-Bank.

4. Another point raised by the learned counsel for the petitioners-borrowers is that the three properties of the petitioners-borrowers were put to auction and even though a sum of Rs.1.21 crores was realised by the respondent-Bank against the sale of two properties and only a sum of Rs.5.00 lakhs remained to be recovered against the outstanding amount, instead of realising the said amount of Rs.5.00 lakhs from the petitioners-borrowers independently, the respondent-Bank has still proceeded to put to auction the third property, which is also illegal.

5. Per contra, Mrs.S.R.Sumathy, learned counsel for the respondent-Bank, vehemently opposed the submissions of the learned counsel for the petitioners and defended the extension of time by the appropriate Committee of the respondent-Bank itself. Drawing the attention of this Court to the very same Communications, dated 03.11.2016 and 16.11.2016, she urged that the Authorised Officer of the respondent-Bank has only recommended to the Zonal Office concerned, where the said Committee existed, to allow the extension of time in view of overriding circumstances, such as, demonetisation, during that period and, therefore, since all the parties were finding it difficult to make payment before the stipulated date, the time frame was extended by the competent Committee and, within the said extended time, payment was made by the Auction Purchasers.

6. The learned counsel further submitted that the respondent-Bank also extended the loan facility to two of the Auction Purchasers for payment of the remaining 75% of the price and compliance of Rule 9 (4) of the Rules was made by the respondent-Bank and, in these circumstances, the order of the learned DRAT cannot be faulted with and that the learned DRT has erred in setting aside the auctions on technical grounds.

7. Having heard the learned counsel for the parties, we are satisfied that there is no error in the order passed by the learned DRAT, much less any error fatal to the auction proceedings in the present case.

8. The extension of time was not only granted by the competent Committee in the Zonal Office, but, even though it was granted by the Authorised Officer of the respondent-Bank, it cannot be said to be a violation of any statutory provisions of the Security Interest (Enforcement) Rules or the provisions of the SARFAESI Act. It is absolutely the internal affair of the respondent-Bank as to who is to authorise such extension of time. The words employed in Rule 9 (4) of the Rules are to the effect that extension of time may be agreed upon by the purchasers and the secured creditor for a period of three months. The word ''secured creditor'' includes within its ambit and scope any of the Authorised Officer or Committee, as the case may be. The period of extension, in the present case, even though falls beyond three months due to the overriding circumstances, such as demonetisation, where on the recommendation of the Authorised Officer, the competent Committee of the Zonal Office of the respondent-Bank extended such time, cannot be held to be fatal to the auction proceedings. The provisions under Rule 9 (4) of the Rules cannot be read stricto sensu in a straight-jacket manner so as to invalidate any auction proceedings for such extension of time beyond three months, as prescribed.

9. In the circumstances of the case, as the petitioners-borrowers have not made any efforts to offer money to the respondent-Bank to seek their right of redemption as is envisaged in the scheme of the Act, we are not inclined to uphold the challenge of the petitioners-borrowers. As far as the adjustment of the auction price realised from two of the properties/assets is concerned, we do not see any reason for not allowing or holding the auction of the third property, for the reason that as the realisation of the two properties fell short of the total outstanding amount of the respondent-Bank, the entire secured assets in the form of three assets can very well be auctioned, in exercise of the power conferred on the respondent-Bank and, therefore, after auction of the said properties, realisation of the price and adjustment against the outstanding loan amount, reverting back to the normal procedure for recovery other than the auction of the third property is neither envisaged nor envisaged upon by the borrowers.

10. Therefore, we do not find any error in the order passed by the learned DRAT in setting aside the order of learned DRT,

which set aside the Sale in question. Accordingly, this Writ Petition filed by the petitioners-borrowers is devoid of merit and is liable to be dismissed, which is, accordingly, dismissed. No costs. Consequently, the connected W.M.P.Nos.20073 and 20074 of 2019 are closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Chief Manager and Authorised Officer,
   Indian Bank,
   Jafferkhanpet Branch,
   119/1, Zenofer Tower,
   Jawahrlal Nehru Salai,
   Jafferkhanpet,
   Chennai-600 083.

2. Debt Recovery Appellate Tribunal,
   Chennai.

+1cc to Mr.B.K.Girish Neelakandan, Advocate, S.R.No.97136
+1cc to Mrs.S.R.Sumathy, Advocate, S.R.No.95685

W.P.No.20867 OF 2019

GMR(CO)
CS/13/12/2019