

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

WP.No. 2455 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard counsel for the petitioner, Sri A.Sumanth, Standing Counsel for 1st respondent, Sri A.Krishnam Raju, Counsel for respondents 2 & 3, and Sri Gagi Reddy, Counsel for 4th respondent.

2. Petitioners have filed this Writ Petition to declare the action of the 3rd respondent in (a) conducting e-auction on 10.08.2018 without following due process of bidding, (b) the consequently confirming the bid for sale of property issued in proceedings No.UBI:ADV:2018/228 dt.20.08.2018 and (c) the issuance of sale certificate dt.30.01.2019 as arbitrary, illegal and contrary to Rules 9(3) and 9(4) of the Security Interest (Enforcement) Rules, 2012 (for short 'the Rules'). They also seek setting aside of confirmation order, sale certificate and for restoration of possession of the subject property.

3. In brief, the petitioners have purchased the subject property under a registered sale deed bearing document No.11942 of 2017 dt.04.09.2017 from their previous vendors, but at the time of execution of the said sale deed, the petitioners' vendors did not give to the petitioners the original of the link document No.10565/2008 contending that they were lost.

4. Believing the representation of the vendors, petitioners obtained the sale deed on 04.09.2017 without getting the link document i.e. the registered sale deed document bearing No.10565 of 2008, from their vendors. After purchasing the property, the petitioners were put in possession of the property.

5. However, the petitioners came to know that the link document bearing No.10562 of 2008 was in the custody of the 2nd respondent-bank and on the security of the property contained in the said document, a loan was obtained.

6. Petitioners immediately lodged a complaint on 12.01.2018 before the Station House Office, Medipally Police Station alleging that their vendors committed the offence of cheating and criminal breach of trust, which is pending.

7. The respondents 2 and 3 in the meantime had issued a publication invoking the provisions of the SARAESI Act, 2002 (for short 'the Act') proposing to auction the subject property on 28.02.2018 contending that an amount of Rs.58,72,393/- was due to them and that the subject property had been mortgaged to them.

8. Though petitioners approached respondents 2 & 3 and requested to stop the auction, the auction went ahead and the 4th respondent became the highest bidder quoting Rs.80,25,000/-.

9. After the 4th respondent became the highest bidder, he remitted only Rs.4,10,000/- on 16.08.2018 and Rs.8,00,000/- on 17.08.2018 and then letter of Confirmation of Sale on 20.08.2018 was issued to the 4th respondent, who had paid the remaining sale consideration of Rs.60,15,000/- on 29.01.2019. The respondents 2 and 3 also issued Sale Certificate on 30.01.2019 and delivered physical possession of the property, though the Sale Certificate is yet to be registered.

10. It is not in dispute that the petitioners paid Rs.27,00,000/- and Rs.13,00,000/- on 21.08.2018 in an attempt to redeem the property, and though the amount was received, it was not credited to the loan account in view of the auction being conducted on 10.08.2018.

11. It is the principal contention of the counsel for the writ petitioners that it was incumbent on the part of the auction purchaser to deposit 25% of the amount of the sale price either on the date of the auction or on the next working day under sub-Rule(3) of the Rule 9 of the Rules framed under the Act, and the balance amount of the purchase price payable shall be paid by the auction purchaser to the authorized officer of the 2nd respondent-bank on or before 15th day of the confirmation of sale of the immovable property or as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months under sub-Rule(4) of Rule 9 of the Rules.

12. It is contended by the petitioners that the respondents 2 and 3, having conducted auction on 10.08.2018, ought to have insisted for payment of 25% of the purchase price on the same day or on the next day, but instead favoured the 4th respondent-auction purchaser by taking the 25% of purchase price amount on 16.08.2018 and 17.08.2018, contrary to sub-Rule(3) of Rule(9), and even the balance sale consideration amount of Rs.60,15,000/-, (which was to be paid within 15 days of the confirmation of the sale), was accepted by respondents 2 and 3 though it was paid on 29.01.2019, much beyond the maximum limit of three months fixed in sub-Rule(4) of Rule 9.

13. It is the contention of the counsel for the petitioners that if there is a default in payment within the period mentioned in sub-Rule(4) of Rule 9, it was the duty of the respondents 2 and 3 to forfeit the amount paid/deposited initially by the auction purchaser and the property should be resold, but by favouring the 4th respondent, the mandatory provisions of Rule 9 were not followed by respondents 2 and 3.

14. Neither the counsel for respondents 2 and 3/bank nor the counsel for the 4th respondent dispute the dates of payment of 25% deposit or the date of payment of balance consideration by the 4th respondent, both of which are clearly in violation of the mandate contained in Rules 9(3) and (4) of the Rules.

15. The only contention of the auction purchaser and the counsel for respondents 2 and 3 is that under sub-Section(13) of Section 13 of the Act, there could not have been any sale in favour of the petitioners after the borrower received notice under sub-section (2) of Section 13 without the prior consent of the bank.

16. But that does not empower the respondents 2 and 3 to show undue favourism to the auction purchaser by allowing him to deposit the sale consideration bid for by him as per his choice and in gross violation of the mandatory conditions contained in Rules 9(3), 9(4) and 9(5) of the Rules.

17. From the facts narrated above, it is clear that the petitioners are innocent purchasers, who had believed their vendors, who told them that the link document was lost and obtained the sale deed and later came to know about the suppression of fact of deposit of the original link document with respondents 2 and 3 by the borrower/vendors of the petitioners.

18. When admittedly petitioners had deposited Rs.40 lakhs on 21.08.2018 with the respondents 2 & 3, and the balance payable as on 31.10.2019 on the loan account of the petitioners' vendors is only Rs.17,58,711/- and the petitioners are willing to pay the same within a period of one week as was undertaken by the counsel for the petitioners before us, we see no reason, why the petitioners should not be allowed to clear the loan dues, since the primary object of the respondents 2 and 3 ought to be to recover

the dues when there is a possibility of such recovery, but not to sell the property which had been purchased by the petitioners innocently without knowing about the creation of security interest by their vendors with respondents 2 and 3, when the petitioners have come forward to repay the dues.

19. Accordingly, the Writ Petition is allowed, subject to the petitioners paying a sum of Rs.17,58,711/- along with interest, if any payable on the loan account up to the date of such payment, to the 3rd respondent within one week from the date of receipt of a copy of this order; the amount already deposited by the petitioners as well as the said amount of Rs.17,58,711/- and interest if any paid, shall be adjusted by the respondents 2 and 3 to the loan dues of the borrower and the loan account of the borrower shall be closed. Further, the Confirmation of the Sale of the property in favour of the 4th respondent made on 20.08.2018 and the Sale Certificate issued on 30.01.2019 in favour of the 4th respondent are both set aside; the 4th respondent is directed to redeliver possession of the subject property to respondents 2 and 3, who shall handover possession of the subject property to the petitioners along with original link documents of the borrower on payment of balance dues by petitioners. The respondents 2 and 3 shall also refund the amount deposited by the 4th respondent immediately after receipt of the balance amount from the petitioners, without interest. In default of compliance by the petitioners of any of the above conditions, the Writ Petition stands dismissed. No order as to costs.

20. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

06th November, 2019.

Note: Issue CC in two days.
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