

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.3486 of 2019

ORDER: (*per V. Ramasubramanian, J*)

1) Challenging a sale notice issued under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, the borrowers have come up with the above writ petition.

2) Heard Mr.K.Pamachandra, learned counsel for the petitioners and Mr.P.S.Rajasekhar, learned counsel for the respondents.

3) The petitioners were granted home loan on 28.02.2017. The account became a non-performing asset forcing the bank to issue a demand notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act") dated 18.07.2018. It was followed by a possession notice under Section 13 (4) of the Securitization Act, dated 01.10.2018. The petitioners did not challenge the possession notice before the Debts Recovery Tribunal.

4) The respondents thereafter issued a sale notice dated 14.11.2018 fixing the date of auction as 18.12.2018. At that stage the petitioners came up with a writ petition in W.P.No.43197 of 2018 challenging the sale notice.

5) On 28.11.2018 this Court granted a limited interim order allowing the bank to proceed with the auction but not confirm the same. Subsequently when the writ petition came up for hearing on 28.01.2019 it was represented by the learned counsel for the respondents that there were three bidders in the auction, but they withdrew their offer after coming to know of the interim order. Therefore, the writ petition was closed by an order dated 28.01.2019.

6) Thereafter the bank issued a fresh sale notice dated 08.02.2019 fixing the date of auction as 27.02.2019. Challenging the same, the petitioners have come up with the present writ petition.

7) It is stated by Mr.P.S.Rajasekhar, learned counsel appearing for the respondents that the petitioners, even before notice could be ordered in the writ petition, put up a notice in the property indicating that a writ petition has been filed. According to the learned counsel for the respondents, this is a tactic adopted by the petitioners even on the last occasion, to scare away the prospective buyers.

8) Be that as it may, the only contention with which the petitioners have come up with the above writ petition is that the impugned sale notice dated 08.02.2019, having been issued under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, should have fixed to the date of auction beyond 30 days, but the date of auction was fixed as 27.02.2019.

9) But the above contention deserves to be rejected for the simple reason that this is not the first auction. The first auction was proposed to be held on 18.12.2018 pursuant to the notice under Rule 8 (6) of the Rules, dated 14.11.2018. Insofar as second and subsequent auctions are concerned, the proviso to Rule 9 (1) permits the sale to be conducted, after a gap of 15 days. Sub Rule (1) together with proviso to Rule 9 of the Rules, reads as follows.

“9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) No sale of immovable property under these rules 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) or notice of sale has been served to the borrower.

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.”

10) Therefore, the one and only contention raised by the petitioners has to be rejected. Accordingly, it is rejected and the Writ Petition is dismissed. As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 22, 2019
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HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE Dr. JUSTICE SHAMEEM AKTHER



WRIT PETITION No. 3486 of 2019

Date: 22.02.2019