

THE HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.4616 OF 2019

Date: 13.03.2019

Between:

Mohammed Abdul Razzak S/o.Mohammed Younus,
R/o.Club Road, Badepally Village, Jadcherla Mandal,
Mahabubnagar District.

... Petitioner

v.

State Bank of India,
Stressed Assets Resolution Centre,
Chikkadapally, Hyderabad.
Rep. by its Authorized Officer and another

... Respondents

For Petitioner : Mr. A.Giridhar Rao

For Respondents : Mr. Maruthi Jadav
Standing Counsel for SBI

Gist :

Head Note :

Cases Referred : Nil

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

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

A person, who was successful in an auction conducted about 5 years ago by the Bank under the Securitisation Act 2002, has come up with the above writ petition challenging a fresh E-Auction notice issued by the Bank, together with a prayer for a direction to the Bank to receive the balance bid amount and to issue the sale certificate in his favour.

2. Heard Mr. A. Giridhar Rao, learned counsel appearing for the petitioner and Mr. Maruthi Jadav, learned Standing Counsel appearing for the respondents.

3. A Rice Mill, by name, Sree Lakshmi Narasimha Rice Mill, availed credit facility from the State Bank of India, and committed default, forcing the Bank to initiate measures under the Securitisation Act, 2002. An auction was held on 04.02.2014 in respect of the secured assets and the petitioner in this writ petition became the highest bidder. A letter was issued on the very date of auction, namely, 04.02.2014 confirming the acceptance of the highest bid made by the petitioner and directing him to make payment of the balance 75% of the bid amount on or before 18.02.2014.

4. Within eleven (11) days of receipt of the letter of confirmation, the petitioner sent a registered letter to the Bank on

15.02.2014 informing the Bank that it has come to his notice that a civil suit in O.S. No.279 of 2013 was pending on the file of the Senior Civil Judge, Mahabubnagar in relation to the title to the secured asset. Therefore, by his letter dated 15.02.2014, the petitioner requested the Bank to provide the details about the case to enable him to proceed with the payment of the balance amount and the registration.

5. According to the petitioner there was no response from the Bank for a period of four (4) years, despite the petitioner repeatedly knocking at the doors of the Bank with the balance amount of 75% readily available with him. However, the Bank, according to the petitioner, informed him by a letter dated 30.03.2018 that the Bank was unable to proceed further, due to the pendency of the civil suit. By a subsequent letter dated 25.07.2018, the Bank informed the petitioner that they had no objection to receive the balance of 75% and to execute the sale deed in favour of the petitioner. But, by a reply dated 08.08.2018, the petitioner refused to comply with the demand made in the letter dated 25.07.2018. The petitioner claimed in his reply dated 08.08.2018 that he did not want to get into a long drawn legal process and that the Bank should come forward to complete the deal without any problem.

6. Upon receipt of such a response from the petitioner, the Bank decided to proceed with a fresh auction. It is at that stage that the petitioner has come up with the above writ petition.

7. At the outset, it should be pointed out that the grant of the prayer made by the petitioner in this writ petition would directly

infringe upon the statutory prescriptions. Under the Security Interest (Enforcement) Rules, 2002, a period of (15) days is prescribed for payment of the balance of sale consideration. Rule – 9 (4) of the Rules after its amendment with effect from 04.11.2016 mandated that any extension of time beyond (15) days can be granted only upon an agreement in writing between the parties. After amendment with effect from 04.11.2016, the maximum time for making payment of 75% of the balance bid amount can be extended only upto three (3) months, provided there is an agreement between the purchaser and the secured creditor.

8. Therefore, the extension of time by nearly five (5) years, cannot be ordered either under the pre-amended provision of Rule-9(4) of the Rules or under the post-amended provisions of Rule-9(4) of the Rules. In fact, the very offer made by the Bank by its letter dated 25.07.2018 to proceed with the acceptance of the balance of 75%, is completely contrary to the statutory prescription. But, if the petitioner had taken advantage of the said letter, the matter would have been closed at that, except if it had been challenged by the borrowers.

9. Interestingly, the position between the date of bank's letter dated 25.07.2018 and the position as it prevails today, has not changed. Therefore, we do not know how the petitioner is today prepared to proceed with the sale despite the pendency of the suit when he was not prepared to proceed with the payment of the balance amount at the stage of the letter of the bank dated 25.07.2018.

10. Therefore, the writ petition seeking a prayer contrary to the statutory provisions is completely devoid of merits and hence, it is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. However, in view of the fact that the bank was prepared to take a chance by their letter dated 25.07.2018, they cannot today claim a right to forfeit the amount already paid. Once, the letter dated 25.07.2018 issued by the Bank offering to proceed with the sale is found to be contrary to the statutory prescription, the forfeiture will also automatically be contrary to law. Therefore, while rejecting the prayers made in the writ petition, a direction is issued to the Bank to refund the amount paid by the petitioner, however, without any interest.

12. The miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

March 13, 2019
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THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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