HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.5894 of 2019

ORDER: (per Hon'ble Sri Justice V.Ramasubramanian)

A person, who was a successful bidder in an auction conducted on 06.11.2015 but in whose favour a sale certificate could not be issued due to the pendency of an application under Section 17 of the SARFAESI Act 2002, has come up with the above Writ Petition seeking a direction to the Bank to execute and register the document, on the ground that the appeal filed by the borrower under Section 17 of the SARFAESI Act 2002 has already been dismissed.

Heard Mr.L.Ravichandran, learned Senior Counsel appearing for the petitioner.

The petitioner became the successful bidder in an auction conducted on 06.11.2015. The petitioner also paid 25% of the bid amount. But, before the petitioner could make payment of the balance of 75%, the borrower approached the Tribunal in S.A.No.471 of 2015. On account of the said appeal, the Bank did not come forward to receive the balance of sale consideration. Eventually, S.A.No.471 of 2015 was dismissed on 02.01.2019. Therefore, after making efforts to pay the amount and after making a representation, the petitioner has come up with the above Writ Petition.

It is the contention of the learned Senior Counsel for the petitioner that the petitioner was not at fault and that the Bank which agreed to receive the balance sale consideration after disposal of the appeal before the Tribunal, made a U-turn before the Tribunal as though they had cancelled the auction. Therefore, the learned Senior Counsel contended that the Bank was obliged to honour their commitment.

But, Rule 9 (4) of the Security Interest (Enforcement) Rules 2002, as it stood before the amendment in the year 2016, enables extension of time only by consent of parties. The expression 'parties' was interpreted by the Supreme Court to include the borrower also. But, this conundrum was removed by an amendment to Rule 9 (4) under G.S.R.No.1046 dated 03.11.2016. Under the amended Rule, time for payment of the balance of sale consideration can be extended only upon an agreement in writing between the purchaser and the secured creditor and that too for a period not exceeding three months.

Though the amendment came into effect on 04.11.2016 and the sale in this case had taken place on 06.11.2015, we do not think that we would allow the sale that took place four years ago to be confirmed at this stage. Even if the contention that the un-amended Rule has to be taken into account is accepted, a consent is required from the borrower also. It is not the case of the petitioner that they have consent of the borrower. Therefore, neither under the pre-amended Rule nor under the amended Rule, the petitioner can seek the relief that they have sought in this Writ Petition.

Therefore, the Writ Petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

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V.RAMASUBRAMANIAN, J

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P.KESHAVA RAO, J

26.03.2019
Gsn.