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

Writ Petition.No.8651 of 2019

O R D E R: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

This Writ Petition is filed challenging the order dt.10.04.2019 passed by the Debt Recovery Tribunal-II at Hyderabad dismissing the Review Petition No.3 of 2018 in SA.No.419 of 2017.

2. Petitioner is the borrower, who had availed house loan from 1st respondent-Bank for construction of a house to a tune of Rs.5,73,000/- on 07.03.2017, and the loan account of the petitioner became irregular since he did not pay the EMIs regularly.

3. Ultimately on 25.04.2019 a Demand Notice under Section 13(2) of the SAFAESI Act, 2002 (for short 'the Act') was issued demanding the petitioner to pay Rs.6,83,313/- as on 31.03.2019 within 60 days.

4. According to the petitioner, even thereafter petitioner paid about Rs.75,000/- on 25.05.2009.

5. Petitioner contends that suddenly a sale notice for schedule property was issued on 18.09.2009 which was challenged in SA.No.288 of 2009 and a conditional interim stay was granted on 19.10.2009, pursuant to which the petitioner deposited a further sum of Rs.50,000/-, though he was asked to pay Rs.1,50,000/-.

6. Thereafter, another sale notice was issued on 26.12.2009, which was again challenged by the petitioner in SA.No.33 of 2010.

7. This SA came to be dismissed for default on 11.05.2013.

8. The 1st respondent then approached the Chief Metropolitan Magistrate, Cyberabad under Section 14 of the Act and obtained a warrant to take physical possession of the property.

9. Petitioner contends that when the 1st respondent's bank officials along with the Advocate-Commissioner came to the petitioner's premises on 09.04.2014, petitioner stated that he was ready to pay the entire outstanding amount, but the 1st respondent-bank officials refused to receive it and alleged that property had already been sold to a third party.

10. SA.No.419 of 2017 was then filed by the petitioner to set aside the action of the 1st respondent in taking physical possession of the property through Advocate-Commissioner.

11. Petitioner *inter alia* contends that the value of the subject property is more than Rs.30 lakhs and that the 1st respondent-Bank had sold the same for a very low price; that when he had expressed his willingness to redeem the mortgage property under Section 13(8) of the Act, the 1st respondent-bank refused to consider the same; and that the action of the 1st respondent is arbitrary.

12. It is not in dispute that the 2nd respondent had participated in an auction which was held on 01.02.2010 and he did not deposit the balance bid amount of Rs.14,21,000/- within 15 days from the date of confirmation of Sale and he paid the balance consideration only on 29.03.2014, and thereafter obtained Sale Certificate.

13. The SA.No.419 of 2017 (Old SA.No.317 of 2014) was dismissed on 20.04.2018 by the Debt Recovery Tribunal-II, Hyderabad on the ground that when the Advocate-Commissioner went to the premises, petitioner had given an undertaking to vacate the premises by 14.04.2014, but he approached the Tribunal on 11.04.2014 and got an interim stay on condition of depositing Rs.1,50,000/-. It also observed that since the petitioner did not comply with the said condition, he is not entitled to the relief in SA.No.419 of 2017(Old SA.No.317 of 2014).

14. Petitioner sought a Review of the said order on the ground that he had complied with the conditional order dt.12.05.2014 in SA.No.317 of 2014, but the 1st respondent-Bank had misrepresented that he did not comply with the said order, and therefore the order dt.20.04.2018 ought to be reviewed.

15. The Debt Recovery Tribunal dismissed the said Review Petition reiterating its earlier order. It observed that though his finding in its earlier order about non-compliance by the petitioner of the condition to deposit was not correct, still the giving of the

undertaking by the petitioner was not disputed and therefore SA.No.419 of 2017 was rightly dismissed by it.

16. Assailing the same, this Writ Petition is filed.

17. It is the principal contention of the counsel for the petitioner that when the auction was conducted on 01.02.2010, in which the 2nd respondent became the auction purchaser, it was the duty of the 2nd respondent/auction purchaser to deposit the entire consideration amount as per Rules 9(3) and 9(4) of the Security Interest Enforcement Rules, 2002. It is pointed that at that point of time, any extension of time for depositing the balance amount could have been granted to the auction purchaser only with the consent of the borrower; and without the consent of the petitioner/borrower, the 1st respondent-bank could not have confirmed the Sale and permitted the 2nd respondent to pay the balance sale consideration on 29.03.2014 and obtain Sale Certificate.

18. The fact of payment of balance sale consideration on 29.03.2014 by the 2nd respondent is not disputed by the counsel for the 1st respondent-Bank as well as the counsel for the 2nd respondent. It is also not disputed that consent of the petitioner/borrower was required under Rule 9(4), as it stood at that point of time, in order to grant any further period to the auction purchaser to deposit the balance sale consideration, and that such consent of the borrower/petitioner was never obtained.

19. Thus, it is clear that on failure of the 2nd respondent to pay the balance consideration within the 15 days period after confirmation of sale, the 1st respondent-bank should have resorted, under Rule 9(5), to forfeiture of the 25% amount deposited by him and the property was required to be resold.

20. Unfortunately, the 1st respondent-Bank did not resort to Sub-Rule(5) of Rule (9) at all and favored the 2nd respondent by giving him an extension of time to comply with the requirement of deposit of balance sale consideration from 15.02.2010 to 29.03.2014 in blatant violation of the Rule 9(4).

21. This fact appears to have been lost sight of the Debt Recovery Tribunal-II, Hyderabad and it could not have proceeded to hold in favour of the respondents on the ground that the undertaking said to have been given by the petitioner under the circumstances which appears to be coercive in nature i.e. under threat to vacate the subject property and deliver possession by a particular date to the Advocate-Commissioner.

22. Therefore, the very confirmation of sale in favour of the 2nd respondent or delivery of possession to the 2nd respondent are declared as null and void; the Sale Certificate issued to the 2nd respondent is set aside; and the possession of the property is directed to be restored to the petitioner by the respondents. Since the petitioner is entitled an opportunity under Section 13(8) of the Act to clear the dues before the transfer of sale of the secured

asset/subject property, petitioner is granted four (04) weeks time from the date of receipt of a latest account statement from the 1st respondent-bank to pay the entire dues to the 1st respondent-bank up-to-date. In default, this Writ Petition shall stand dismissed.

23. With the above directions, this Writ Petition is allowed. No order as to costs.

24. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

24th October, 2019.

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