

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.7202 of 2018

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

In this Writ Petition, the petitioner, who is a guarantor to a loan taken by the 2nd respondent from the 1st respondent Bank, has sought a Writ of Mandamus to declare the action of the 1st respondent Bank in conducting auction on 27-10-2017 as illegal, null and void on the ground that sale notice under proviso to Rule 9(1) of the Securities Interest Enforcement Rules, 2002 was not served on petitioner as is mandated by the said provision.

2. Notice in this Writ Petition sent to the 2nd respondent as well as 3rd respondent auction-purchaser has been served, but there is no representation on their behalf.

3. In the counter-affidavit filed by 1st respondent Bank in para-13, it is admitted that sale notice and auction notice dt.09-10-2017 proposing to hold e.auction on 27-10-2017 sent to the petitioner was returned unserved. Though it is alleged that petitioner managed to get the said notice returned, no material is placed before this Court to come to the conclusion that it is the petitioner who managed to return the said notice.

4. Learned counsel for petitioner sought to place reliance on 27 of the General Clauses Act to contend that there is a presumption of

service of notice on petitioner since it was sent to the right address, but the said presumption is rebuttable presumption and in view of the very pleading of the 1st respondent Bank that notice dt.09-10-2017 was not served on petitioner, it cannot be said that there is compliance with the proviso to Rule 9(1), which mandates service of notice of sale on the borrower.

5. In this view of the matter, the Writ Petition is allowed; the auction sale conducted on 27-10-2017 pursuant to sale notice, auction notice dt.09-10-2017 issued by the 1st respondent Bank is set aside, and the sale certificate dt.27-11-2017 issued by the 1st respondent Bank to the 3rd respondent, which is said to have been registered in favour of 3rd respondent, are set aside. Liberty is granted to the 1st respondent Bank to comply with proviso to Rule 9(1) of the Rules and other requirements of law. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 18-11-2019

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