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

Writ Petition.No.15128 of 2019

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

Petitioners, who are auction purchasers in an auction conducted by the Recovery Officer of property belonging to the 1st respondent which had been mortgaged to the 2nd respondent-Bank, have filed this Writ Petition assailing the order dt.05.07.2019 in SA.No.1409 of 2017 of Debt Recovery Tribunal-II at Hyderabad(for short 'the Tribunal') setting aside the Sale Certificate issued to them.

2. The only ground on which the Sale Certificate was set aside in the impugned order passed by the Tribunal is that there was no affixture on the property of the *e*-auction Sale Notice dt.19.07.2017.

3. It was the finding of the Tribunal that there was no response from the 2nd respondent-Bank to this ground raised by the 1st respondent before it. It opined that under Rule 8(7) of the Rules framed under the SARFAESI Act, 2002 such affixture is mandatory and since there is non-compliance with it, the *e*-auction Sale stood vitiated.

4. Before this Court, the 2nd respondent-Bank has filed a counter affidavit taking the plea that they did comply with Rule 8(7) of the Rules and that it had affixed the auction notice in conspicuous part of the subject property on 19.07.2017 itself and

photographs showing the affixture of the notice on the property were filed.

5. Counsel for the 2nd respondent-Bank contends that this material was not readily available and therefore could not be filed before the Tribunal.

6. Though counsel for the 1st respondent sought to dispute the said photographs and the stand taken by the 2nd respondent about compliance with Rule 8(7) of the Rules, since there is no material placed by the 1st respondent to disbelieve the stand of the 2nd respondent, we are not inclined to entertain the said plea.

7. A further plea is sought to be raised by the 1st respondent that there was no proper description of the subject property in the *e*-auction notice dt.19.07.2017 and that this stand was specifically raised before the Tribunal but was not adverted to or decided by it.

8. There is no plea raised in the counter affidavit filed by the 1st respondent that this contention was urged before the Tribunal and the Tribunal did not deal with it. Therefore, it has to be presumed that though the contention was raised, it was not argued and was given up by the 1st respondent before the Tribunal. So, 1st respondent is not entitled to urge the said contention before this Court.

9. Another contention regarding maintainability of the Writ Petition was raised by the counsel for the 1st respondent adverting

to the appellate remedy available to the writ petitioners under the Act.

10. But he did not dispute that as of now the Appellate Tribunal having jurisdiction is located in Calcutta, and that there is no Chairman to the said Appellate Tribunal, and that the parties have to file the appeal in Calcutta and then go to Allahabad to avail the remedy of appeal under the Act. Therefore, it cannot be said that the appellate remedy, in the facts and circumstances of the case, is an effective alternative remedy barring this Court from entertaining this writ petition.

11. Since the material placed by the 2nd respondent-Bank before this Court establishes compliance with Rule 8(7), the impugned order cannot be sustained.

12. Accordingly, the Writ Petition is allowed; the order dt.05.07.2019 in SA.No.1409 of 2017 of the Debt Recovery Tribunal-II at Hyderabad is set aside; and the said Appeal is dismissed. Consequently, the Sale Certificate issued to the petitioners on 18.09.2017 is held to be valid in law. No order as to costs.

13. The miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

16th October, 2019.

gra