HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION Nos. 36204 of 2016 and 13231 of 2018

COMMON ORDER: *(per V. Ramasubramanian, J)*

1) While the first writ petition is by the highest bidders in an e-auction conducted on 24.07.2015 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act"), the second writ petition is by the borrower.

2) Heard Mr.K.Sai Ram Murthy, learned counsel for the petitioners in first writ petition, Mr.Kishore Rai, learned counsel appearing for the petitioner in the second writ petition and Mr.K.Mallikarjuna Rao, learned counsel appearing for the Bank.

3) The petitioner in the second writ petition availed credit facility with the bank and the account became a non-performing asset on 28.09.2012. Therefore, the bank initiated steps under the Securitization Act and brought the secured asset to sale in an e-auction held on 24.07.2015.

4) The petitioners in the first writ petition became the successful bidders in the auction so held. They deposited E.M.D., which together with the amount deposited upon being declared to be the successful bidders, worked out to 25% of the amount. The petitioners

in the first writ petition had 15 days time for deposit of the balance amount from the date of confirmation of the auction.

5) It appears that after paying the 25% of the amount, the petitioners in the first writ petition went to the property that was auctioned and found that the boundaries stated in the auction notice did not tally with the property shown to them. Therefore, the successful bidders requested the officials of the bank to show the actual land that was the secured asset and to fix the boundaries before they could proceed with the demand for the balance amount and issue of the sale certificate.

6) It appears that the successful bidders also addressed a letter dated 10.08.2015 requesting the Authorised Officer to direct the bank to identify the property and to resolve the problems. But the boundaries were not demarcated forcing the successful bidders to make an application on 28.08.2015 to the Mandal Revenue Officer to direct the Mandal Surveyor to demarcate the land and to fix boundaries.

7) Since the repeated demands made by the petitioners both to the Authorised Officer and to the officials of the bank fell into deaf ears, the petitioners sent a letter dated 30.12.2015 seeking refund of the amount of Rs.18,82,500/- already deposited by them. But the bank did not either identify the property or refund the money.

8) Therefore, after issuing a legal notice dated 02.09.2016 demanding refund of the amount, the highest bidders came up with the first writ petition in W.P.No.36204 of 2016. The prayer made by the

highest bidders in their writ petition W.P.No.36204 of 2016 reads as follows:

> “For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction, particularly a Writ of Mandamus, declaring the action of the respondent No.2 herein in forfeiting the amount of Rs.18,82,500/- deposited towards 25% of the sale amount by the petitioners herein in the e-auction held on 24.07.2015 conducted by the second respondent contrary to the provisions of the SARFAESI Act and consequently direct the second respondent herein to refund the amount of Rs.18,82,500/- deposited towards 25% of the sale amount by the petitioner herein in the e-auction held on 24.07.2015 conducted by the second respondent and to pass such other order or orders as this Hon’ble Court may deems fit just and property in the circumstances of the case.”

9) During the pendency of the said writ petition, the borrower came up with the second writ petition namely W.P.No.13231 of 2018 seeking cancellation of the auction held on 24.07.2015 and for a further direction to the bank to consider the OTS proposal. Therefore, the second writ petition was clubbed along with the writ petition filed by the successful bidders.

10) A careful look at the prayer made by the borrower in their writ petition, W.P.No.13231 of 2018, would show that the borrower is on the same page with the successful bidders, insofar as the prayer relating to the auction is concerned. Both the borrower as well as the

successful bidders, in their writ petitions seek cancellation of the auction held on 24.07.2015.

11) However, today Mr.K.Sai Ram Murthy, learned counsel appearing for the successful bidders contended that the successful bidders do not want the refund of the money but they want the bank to confirm the sale, receive the balance sale consideration and issue the sale certificate in their favour.

12) But we do not think that the successful bidders can be allowed to approbate and reprobate after having issued a letter way back on 30.12.2015 seeking refund and after having issued a legal notice dated 02.09.2016 seeking refund, and also after coming up with a writ petition seeking cancellation of the auction and refund of the amount. It may not be open to the successful bidders to seek a prayer diametrically opposite to the prayer with which they have come up.

13) Insofar as the second writ petition is concerned, it is stated by Sri K.Mallikarjuna Rao, learned counsel appearing for the Bank that the OTS proposal submitted by the borrower was already accepted and the entire amount has been received. According to the learned counsel for the Bank, the loan account has been fully discharged and the bank is prepared to return the original title deeds deposited with them by way of security to the borrower.

14) In other words, the bank has now agreed to allow the borrower to redeem the property and towards such step, they have also received the entire amount due and payable under the OTS.

15) It is well settled that the borrower has a right of redemption available, until the sale certificate is issued and registered in favour of the auction purchaser. Therefore, the successful bidders, who are the petitioners in the first writ petition, cannot oppose the prayer of the borrower, when the bank itself is conceding the prayer of the borrower. The successful bidders cannot also ask for anything contrary to the prayer with which they have come up with the above writ petition.

16) Today the bank is prepared to return the amount paid by the successful bidders. In such circumstances, the successful bidders cannot ask for something other than what they have prayed for.

17) In view of the above, both the writ petitions are allowed as prayed for.

18) As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

February 05, 2019
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