HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NOS.16691 AND 16911 OF 2019

COMMON ORDER

(*Per Honourable Sri Justice M.S.Ramachandra Rao*)

In these two Writ Petitions, auction purchasers, who participated in the auction held on 20.04.2019 by the 1st respondent bank, have approached this Court challenging the action of the 1st respondent bank in conducting the said auction without disclosing pending litigation in respect of the properties which were put to auction thereby violating Rule 8(6)(a) and (f) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') and in forfeiting the EMD amounts paid by the petitioners on the ground that the petitioners did not come forward to pay the balance sale consideration.

2. Heard the learned counsel for the petitioners and Sri M.Narender Reddy, learned senior counsel for the 1st respondent bank.

3. It is an admitted fact that on 15.04.2019 there was an order passed in I.A.No.1301 of 2019 in S.A.No.127 of 2019 to which the respondents are parties, wherein there was stay granted up to 21.05.2019 which was not disclosed to the petitioners by the 1st respondent bank.

4. Rule 8(6)(a) of the Rules of 2002 requires the financial institution conducting sale through its Authorised Officer to disclose encumbrances known to it and also <u>any other thing which the Authorised Officer considers it material for a purchaser to know in order to judge the nature and value of the property.</u>

5. In our considered opinion, the pendency of litigation in respect of the properties which are being put to sale, at the time of the auction, is a material fact which should have been disclosed by the Authorised Officer to the purchasers who intended to participate in the auction being conducted by it; and non-disclosure of the same should vitiate the very conduct of the auction.

6. Therefore, the forfeiture of the EMD amounts deposited by the respective petitioners with the 1st respondent bank cannot be said to be valid in law and has to be declared to be arbitrary and violative of Articles 14 and 300A of the Constitution of India and also the provisions of the Rules of 2002 framed under the SARFAESI Act, 2002.

7. Therefore, the 1st respondent bank is directed to refund the EMD amounts of the respective petitioners to them within two weeks from the date of receipt of a copy of this order along with interest at 6% per annum from the date of forfeiture till the date of repayment.

8. The Writ Petitions are accordingly allowed. Pending miscellaneous petitions, if any, in both cases shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

30th OCTOBER, 2019

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