

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Coram :

*** HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**

AND

THE HON'BLE SRI JUSTICE K. LAKSHMAN

+WRIT PETITION No.19274 OF 2019

% Delivered on: 16-12-2019

Between:

Smt. Habeebunnisa Begum W/o Mohd. Anwarullah,
Aged about 57 years, Occ: House-wife,
R/o H.No.1-4-888/B, Bholakpur,
Musheerabad, Hyderabad.

.. Petitioner

Vs.

\$ M/s. Manidhari Metal Pvt. Ltd., rep.by
its Managing Director Pawanraj S. Kanugo,
having its office 4-4-13, Mahankali Street,
Ranjigunj, Secunderabad & 4 others

.. Respondents

! For Petitioners

: Mr.V. Ravinder Rao,
learned Senior Counsel

^ For Respondent Nos.1 to 4

: Mr. B. Sreenivasa Reddy

For respondent No.5

: Mr. M. Srikanth Reddy,
Learned Standing Counsel.

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> Head Note

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? Cases Referred

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1. (2013) 10 SCC 83
2. 2016 (6) ALD 409
3. 2018 (2) ALD 543

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HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.19274 OF 2019

ORDER: (per Hon'ble Sri Justice K. Lakshman)

Assailing the order dated 29.07.2019 of the Debts Recovery Tribunal - I, Hyderabad, in S.A. No.322 of 2015, the petitioner - auction purchaser, filed the present writ petition.

2. The main contentions of the writ petitioner are that she is the successful bidder in the auction conducted by respondent No.5 - State Bank of India, Hyderguda, Hyderabad on 27.03.2015, pursuant to *e-auction sale*, dated 24.02.2015, in respect of properties bearing (i) House Number 1-4-888/B/A to an extent of 130 square yards for Rs.31,45,000/-, (ii) House Number 1-4-882/5/A to an extent of 31 square yards for an amount of Rs.7,15,000/-, (iii) House Number 1-4-888/B to an extent of 258 square yards for an amount of Rs.74,40,000/- and (iv) House Number 1-4-882/5 to an extent of 160 square yards for an amount of Rs.38,60,000/-, all situated at Bakaram, Hyderabad. In all she has paid an amount of Rs.1,51,60,000/- and got the sale certificates registered in her favour later vide document Nos.1979 of 2015 to 1982 of 2015, dated 23.05.2015.

i) According to the petitioner, respondent No.1 herein availed a loan from respondent No.5 bank in the year 2009 and respondent Nos.2 to 4 offered their properties as security. Since there was default

in repayment of the loan, their account was declared as Non-Performing Asset. Subsequently, respondent No.5 bank had issued notice on 01.03.2014 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') followed by possession notice on 08.10.2014 under Section 13 (2) of the SARFAESI Act read with Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 (for short 'Rules'). Respondent No.5 got published the possession notice in two leading Newspapers viz., 'Indian Express' and 'Andhra Prabha' on 10.10.2014 as contemplated under Rule 8 (2) of the Rules, 2002. But, there was no response from respondent Nos.1 to 4 despite receiving and acknowledging the said notices. Respondent No.5 issued sale notice dated 14.11.2014 claiming outstanding dues of Rs.1,71,38,575/- together with interest, expenses and costs.

3. It is the further contention of the petitioner that respondent No.5 issued *e-auction* sale notice dated 24.02.2015 as contemplated under the SARFAESI Act intimating respondent Nos.1 to 4 herein about the auction to be held on 27.03.2015 in respect of the mortgaged assets. According to her, the said *e-auction* sale notices dated 24.02.2015 were served on respondent Nos.1 to 4 and the same were affixed on the premises/conspicuous part of the mortgaged properties, and also taken photographs to that effect. The Authorized Officer of the Bank has also got published the *e-auction* sale notice dated

24.02.2015 in two leading Newspapers i.e., 'Indian Express' and 'Rahnuma-e-Deccan' on 24.02.2015 itself informing that the auction would be held on 27.03.2015. The details of properties, minimum upset price of the auction etc., were mentioned in the said *e-auction* notice dated 24.02.2015. Accordingly, auction was held on 27.03.2015, wherein the petitioner herein was declared as highest bidder. The petitioner also paid an amount of Rs.1,51,60,000/- within the time frame contemplated under the Rules. On receipt of the said sum, respondent No.5 bank confirmed the sale, issued the sale certificates in favour of the petitioner and got the same registered in favour of the petitioner vide document Nos.1979 of 2015 to 1982 of 2015, dated 23.05.2015. After purchase, she has invested an amount of Rs.20.00 lakhs on the said properties for repairs/remodelling, and since the date of purchase and registration of sale certificates, she has been in continuous possession of the said properties.

4. According to her, respondent Nos.1 to 4 herein have allowed respondent No.5 herein to complete the entire process and conveniently approached the DRT-I, Hyderabad by way of filing an application under Section 17 of the SARFAESI Act vide S.A. No.322 of 2015, raising various irregularities in conducting the sale.

5. The Tribunal vide order dated 29.07.2019, allowed the said S.A. No.322 of 2015 quashing the measures taken by respondent No.5 under the SARFAESI Act including the auction conducted on 27.03.2015 and subsequent Sale Certificates registered vide document

Nos.1979 of 2015 to 1982 of 2015, dated 23.05.2018. In the said order, the Tribunal also directed respondent No.5 bank to pay the auction amount received from the petitioner herein with interest @ 9% from the date of receipt till payment, within two weeks from the date of receipt of copy of the said order. However, liberty was granted to respondent No.5 bank to initiate further measures under the SARFAESI Act against the secured assets duly following all the guidelines and rules laid down thereunder.

6. Feeling aggrieved by the said order, the petitioner herein, who is auction purchaser, filed the present writ petition.

7. It is relevant to note that the petitioner herein being auction purchaser was impleaded by the Tribunal vide order dated 15.02.2019 in I.A. No.294 of 2019 as respondent No.2. It is the contention of the petitioner herein that though respondent Nos.1 to 4 filed the said S.A. No.322 of 2015 in the year 2015 itself, respondent No.5 bank herein did not intimate the said fact to her and also did not take any steps to implead her as a party to the said S.A. According to her, respondent No.5 bank intimated her in 2019 about filing of S.A. No.322 of 2015 by respondent Nos.1 to 4 and allowing the same on 15.02.2019. Thus, she came to know about the said proceedings in the year 2019 and that she was unaware of the same till she received notices from the Tribunal. According to her, respondent No.5 bank kept her in dark with regard to the said proceedings. However, feeling aggrieved by

the said order, dated 29.07.2019, passed by the Tribunal in S.A. No.322 of 2015 she filed the present writ petition.

8. According to the petitioner, though respondent Nos.1 to 4 have raised several grounds in S.A. No.322 of 2015, the Tribunal has allowed the same on the ground that respondent No.5 bank failed to substantiate the reasons for publishing possession notice dated 08.10.2014 in *Andhra Prabha* Telugu Newspaper and publishing *e-auction* sale notice dated 24.02.2015 in Urdu Newspaper viz., *Rahnuma-e-Deccan*; and also the bank did not submit any proof that vernacular newspaper in which sale notice was published is a leading newspaper having sufficient circulation in that locality. According to her, respondent Nos.1 to 4 herein were aware of the entire proceedings including the auction much before the date of auction and they have been intentionally kept silent till respondent No.5 bank completed the entire process. The intention of the Legislature in providing Rule 8 (6) of the Rules is that no borrower should lose his right to retain his property by paying the dues on or before date of auction.

9. It is the further contention of the petitioner that the said *Rahnuma-e-Deccan* Newspaper was established before Independence. The mainstream of Urdu Newspapers in Hyderabad is *Siasat*, *Rahnuma-e-Deccan*, *Munsif*, *Rashtriya Sahara* and *Etemaad*, and total circulation of all Urdu Newspapers would be around 1.00 lakh. The

one and only Newspaper still running today is *Rahnuma-e-Deccan*. According to her, the said Newspaper is having wide circulation.

10. It is further contended by the petitioner that the subject properties are located in Bakaram, Gandhi Nagar, Hyderabad, where more than 50% of the residents belong to the community to which the petitioner belongs. The Urdu Newspaper *Rahnuma-e-Deccan* is having sufficient circulation in the said locality and also in Hyderabad. May be with the said reason, respondent No.5 bank got published the sale notice in the said Urdu Newspaper *Rahnuma-e-Deccan*. According to her, respondent No.5 bank conducted the auction by following the entire procedure laid down under the SARFAESI Act and the Rules framed thereunder and no irregularities were committed by respondent No.5 bank. She claims that she is a *bona fide* purchaser in the auction conducted on 27.03.2015 and pursuant to the same she paid the entire amount within the stipulated time. On receipt of the same only, the sale was confirmed and accordingly, sale certificates were issued in her favour and later got registered in the manner stated above.

11. According to the petitioner, the Tribunal failed to consider that respondent Nos.1 to 4 herein were well aware about the date of auction much before. The Tribunal erred in holding that respondent No.5 bank failed to comply with the provisions of Rule 8 (2) of the Rules since the *e-auction* sale notice was published in Urdu Newspaper *Rahnuma-e-Deccan*, which is not having sufficient

circulation. According to her, the conclusion of the Tribunal that respondent No.5 bank failed to substantiate the reason for publishing the possession notice in *Andhra Prabha* and *e-auction* sale notice in Urdu Newspaper *Rahnuma-e-Deccan* is illogical and contrary to the SARFAESI Act.

12. With the above said contentions, the petitioner sought to set aside the impugned order.

13. Respondent Nos.1 to 4 filed their common counter reiterating the grounds urged by them before the Tribunal in S.A. No.322 of 2015. They further contended that respondent No.5 bank did not follow the procedure laid down under the SARFAESI Act as well as Rules framed thereunder while conducting the auction. According to them it is obligatory on the part of respondent No.5 bank to comply with the same, and there is no irregularity in the impugned order and it is not liable to be interfered with.

14. Respondent No.5 bank filed a separate counter, almost reiterating their contentions put forth before the Tribunal in S.A. No.322 of 2015, and prayed to pass appropriate orders in the present writ petition.

15. Heard Mr. V. Ravinder Rao, learned Senior Counsel, representing Mr. Tera Rajinikanth Reddy, learned counsel for the petitioner and Sri B. Sreenivasa Reddy, learned counsel for

respondent Nos.1 to 4, and also Mr. M. Srikanth Reddy, learned Standing Counsel for respondent No.5 Bank.

16. It is relevant to mention that respondent No.5 Bank did not challenge the impugned order dated 29.07.2019 passed by the Tribunal. However, in the counter filed by the bank in the present writ petition, it prayed for passing appropriate orders. It is also relevant to mention that though S.A. No.322 of 2015 was filed in 2015 by respondent Nos.1 to 4 herein before the Tribunal, the petitioner herein got impleaded only on 15.02.2019.

17. From the above discussion, the admitted facts are that respondent No.1 availed the loan from respondent No.5 bank in the year 2009 by mortgaging the properties of respondent Nos.2 to 4 as security. Respondent Nos.2 to 4 stood as guarantors to the said loan. As there was default in repayment of said loan, respondent No.5 initiated proceedings under the SARFAESI Act. Respondent No.5 bank got published possession notice dated 08.10.2014 under Section 13 (2) of the SARFAESI Act read with Rule 8 (1) of the Rules in two Newspapers viz., 'Indian Express' and 'Andhra Prabha' on 10.10.2014 as contemplated under Rule 8 (2) of the Rules. Thereafter, the Authorized Officer of the Bank got published *e-auction* Sale Notice, dated 24.02.2015, in two Newspapers viz., 'Indian Express' and 'Rahnuma-e-Deccan'. It is relevant to mention that within a span of four and half months i.e., from the date

of possession notice dated 08.10.2014 and *e-auction* sale notice dated 24.02.2015, respondent No.5 Bank chose to publish *e-auction* Sale Notice in 'Indian Express' and '*Rahnuma-e-Deccan*' instead of '*Andhra Prabha*'. At this juncture, it would be relevant to extract Rule 8 (2) of the Rules which is as under:

“The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.”

Admittedly, respondent No.5 got published the said possession notice in Indian Express and *Andhra Prabha* on 10.10.2014. There is no dispute with regard to the publication of the said possession notice in the said newspapers as contemplated under Rule 8 (2) of the Rules. Similarly, it is also relevant to extract Sub-rule (6) of Rule 8 of the Rules which is as under:

“The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

- (a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) the secured debt for recovery of which the property is to be sold;
- (c) reserve price, below which the property may not be sold;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) 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.”

As per the aforesaid proviso, the Authorized Officer of respondent No.5 bank shall publish sale notice in two leading Newspapers, one in vernacular language having sufficient circulation in the locality. Whereas, in the present case, the Authorized Officer of respondent No.5 bank got published *e-auction* sale notice in Indian Express and *Rahnuma-e-Deccan* on 24.02.2015. With regard to publication of the said notice in Indian Express newspaper, there is no dispute. The dispute is only with regard to the publication of the said notice in *Rahnuma-e-Deccan*.

18. The learned counsel for the petitioner by referring to the background of the said *Rahnuma-e-Deccan* including its launching and circulation etc., would contend that it is a leading Urdu Newspaper having sufficient circulation in the said locality and also in

Hyderabad. He would further contend that the subject properties are located in Bakaram, Gandhinagar, Hyderabad, where more than 50% of the residents belong to the community to which the petitioner belongs.

19. As discussed above, respondent No.5 bank got published the possession notice in *Andhra Prabha* on 10.10.2014 and within four and half months, the very same bank got published *e-auction* sale notice in Urdu Newspaper - *Rahnuma-e-Deccan*. The explanation given by respondent No.5 bank in the counter as well as the contention of the petitioner is that the subject properties are located in Bakaram, Gandhinagar, Hyderabad where more than 50% of the residents belong to the community to which the petitioner belongs and the said *Rahnuma-e-Deccan* is having sufficient circulation in the said locality and also in Hyderabad. Except the same, there is no other explanation given by respondent No.5 bank with regard to change from other leading newspaper in vernacular language i.e., from *Andhra Prabha* to *Rahnuma-e-Deccan*.

20. The intention of the Legislature in employing the language in the proviso to Rule 8 (6) of the Rules that public notice should be published in two 'leading' newspapers, one in vernacular language having sufficient circulation in the locality, is to ensure that there is good publicity for the sale, good competition for its purchase, and the borrower gets a good price on sale of his property. If the bidders are more, the bank can realise its dues easily, and in order to attract more

bidders, wide publicity in respect of auction of the property is required. For the said purpose only, the Legislature intentionally laid down in the proviso to Rule 8 (6) of the Rules as to the publication of auction of property in two “leading” newspapers, one in vernacular language having sufficient circulation in the locality. It is not the intention of the Legislature that the bids should be received only from local people or from only the people belonging to the community to which the petitioner belongs. Therefore, the contentions of respondent No.5 bank as well as the writ petitioner that the subject properties are situated in Bakaram, Gandhinagar, Hyderabad where more than 50% of the residents belong to the community to which the petitioner belongs and that *Rahnuma-e-Deccan* Urdu Newspaper is having sufficient circulation in the said locality are not justifiable and the same are contrary to the Legislative Policy behind proviso to Rule 8 (6) of the Rules. Moreover, neither the petitioner nor respondent No.5 bank gave the details of circulation of the said Urdu Newspaper - *Rahnuma-e-Deccan* either before the Tribunal during pendency of S.A. No.322 of 2015 or before this Court. Therefore, the finding of the Tribunal in the impugned order that respondent No.5 bank failed to substantiate the reasons for publishing possession notice dated 08.10.2014 in *Andhra Prabha* Telugu Newspaper and thereafter publishing *e-auction* sale notice dated 24.02.2015 in *Rahnuma-e-Deccan* Urdu Newspaper, and thereby the bank violated the Rule 8 (6) of the Rules, is proper and we find no error in it.

21. Respondent Nos.1 to 4 further contended that the petitioner - auction purchaser did not deposit the bid amount within the stipulated time as per Rule 9 (3) and (4) of the Rules. In this regard, it would be relevant to extract Sub-rules (3) and (4) of Rule - 9 of the Rules as they stood at the relevant time in 2015, for better understanding:

“9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) x x x x

(2) x x x x

(3) On every sale of immovable property, the purchaser shall immediately i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent, of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed in writing between the parties.”

22. By referring to the said rules, the learned counsel for respondent Nos.1 to 4 would contend that the petitioner paid the amount with delay and therefore, the same would amount to violation of the said provisions and also against the principle that Rule 9 (3) and (4) are mandatory as laid down by the Apex Court in **Sri**

Siddeshwara Cooperative Bank Ltd. v. Ikbal¹ followed by a Division Bench of this Court in **Polisetty Haranadh Muralidhar v. Authorized Officer, Indian Overseas Bank²**.

23. As per the counter filed by respondent No.5 bank, the petitioner - auction purchaser paid 25% of the bid amount of Rs.45,06,000/- on 27.03.2015 and deposited the balance 75% of the amount viz., Rs.21.00 lakhs on 16.04.2015 and Rs.87,27,752/- on 20.05.2015.

24. But, as per the aforesaid rule, auction purchaser has to deposit 25% of the bid amount on the same day or not later than next working day, as the case may be. Whereas, in the present case, the auction was held on 27.03.2015, and the petitioner - auction purchaser paid 25% of the bid amount i.e., Rs.45,06,000/- on 27.03.2015 itself. Then the auction purchaser shall pay the balance amount on or before the fifteenth day of confirmation of sale of immovable property or such extended period *as may be agreed upon in writing between the parties i.e., the borrower, purchaser and the secured creditor.*

25. It is also relevant to note that initiation of measures by respondent No.5 bank under the SARFAESI Act in the present case was in 2014 and the auction was held on 27.03.2015. The amendment to Rule 9 (4) of the Rules vide G.S.R. No.1046 (E), dated 03.11.2016 came into force w.e.f. 04.11.2016 substituting the words “as may be

¹. (2013) 10 SCC 83

². 2016 (6) ALD 409

agreed upon in writing between the parties” by the words “as may be agreed upon in writing between the purchaser and the secured creditor, in any case, not exceeding three months”. Before the said amendment, taking consent from the borrower is mandatory. The word “parties” in sub-rule (4) of Rule 9 of the Rules before amendment would mean ‘the borrower’ also.

26. As discussed above, admittedly the writ petitioner did not pay the balance bid amount within the stipulated period i.e., on or before fifteenth day of confirmation of sale of immovable property. The auction held was prior to amendment to Rule 9 (4) of the Rules. Thus, there was no consent from respondent No.1 - borrower for extension of time as claimed by the writ petitioner and respondent No.5 bank. Thus in the present case, admittedly, the balance 75% of the sale amount viz., Rs.21.00 lakhs was paid on 16.04.2015 and Rs.87,27,752/- was paid on 20.05.2015 which was beyond the stipulated period and without consent of respondent No.1 - borrower. However, respondent No.5 bank without there-being any pleading in the counter, filed letters, dated 09.04.2015, 15.04.2015, 30.04.2015 and 22.05.2015 with regard to extension of time etc., but the same are of no use. We hold that there is clear violation of Rule 9 (4) of the Rules and the sale was held by the Bank in favour of the petitioner contrary to the principle laid down by the Apex Court in **Sri Siddeshwara Cooperative Bank Ltd**¹ followed by the Division Bench of this Court in **Polisetty Haranadh Muralidhar**².

27. In fact, as per Rule 9 (5) of the Rules, in default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold. But, the Tribunal in the impugned order, directed respondent No.5 bank to pay the bid amount received from the petitioner - auction purchaser with interest at 9% from the date of receipt till payment within two weeks from the date of receipt of copy of the order. There is no challenge to the said finding either by respondent No.5 or by respondent Nos.1 to 4 by way of filing a writ petition. Further, the conduct of bank in not initiating steps to implead the writ petitioner in S.A.No.322 of 2015 till February, 2019 is not *bona fide*. As stated above, the bank is having fiduciary duty which the bank failed to exercise in the present case.

28. The SARFAESI Act is a Special Enactment and superficial in nature. Therefore, it is the bounden duty of the bank to strictly comply with the provisions of the Statute as well as the procedures enumerated in the Rules framed thereunder. It is also relevant to note that bank is having 'fiduciary duty' to protect the interest of borrower, while putting properties to sale and to comply with the said provisions while initiating measures under the SARFAESI Act. (See: **Pochiraju Industries Ltd. v. Punjab National Bank**³).

³. 2018 (2) ALD 543

29. In the case on hand, there are serious irregularities committed by respondent No.5 bank in initiation of measures under the SARFAESI Act and also in compliance with Rules made there-under.

30. As such, we hold that the Tribunal rightly allowed S.A. No.322 of 2015 filed by respondent Nos.1 to 4 under Section 17 of the SARFAESI Act with the specific findings and the same does not warrant interference by this Court under Article 226 of the Constitution of India.

31. The writ petition accordingly fails and the same is dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

16th December, 2019

Mgr

Note: L.R. Copy to be marked