HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

Interlocutory Application No.3 of 2018
in
Interlocutory Application No.1 of 2018
in
Writ Petition No.19383 of 2018
and
Writ Petition No.19383 of 2018

COMMON ORDER: (*Per* Sri Justice M.S.Ramachandra Rao)

A loan was advanced by the Syndicate Bank (for short, 'the Bank') (1st respondent) to M/s.Srinivasa Stone Crushers (borrower) on the basis of security created by the borrower of Ac.0.9 gts. in Survey No.73/E, Acs.1.26 gts in Survey No.74/E, Acs.0-32½ gts in Survey No.74/E and Acs.1.17 gts in Survey No.75/E of Hyderpur Village, Bheemanapally Gram Panchayat, Pochampally Mandal, Nalgonda District, Telangana State.

2. The loan installments were not paid, and it was classified as 'Non-Performing' asset.

3. On 09.02.2018, an amount of Rs.67,06,290.87 along with interest @ 19.5% from 08.09.2011 was due from the borrower.

4. Proceedings under the SARFAESI Act, 2002 were initiated by the Bank against the said property by putting it to e-auction.

5. Initially the e-auction was scheduled to be held by the Bank on 19.03.2018 fixing the reserve price at Rs.61,50,000/-. No bidder showed any interest in participating in it and so the e-auction could not be conducted on that day.

6. Thereafter, the reserve price was reduced to Rs.55,35,000/- and a fresh e-auction notice dt.11.05.2018 was got published by the Bank in newspapers on 12.05.2018 in '*Namaste Telangana*' and 'Financial Express'.

7. The Writ Petitioner herein and the 3rd respondent paid the requisite Earnest Money and they were given passwords to participate in the e-auction.

8. The services of the 2nd respondent was engaged by the Bank to provide services relating to the conduct of e-auction.

9. The last date for submission of bids was 04.06.2018, and the auction was scheduled to be conducted on 06.06.2018 between 11:00 a.m. to 12:00 p.m.

<u>The plea of the petitioner</u>

10. According to petitioner, he paid by way of Demand Draft on 02.06.2018, Rs.5,53,000/- towards E.M.D. to the 1st respondent-Bank and he had contacted the 2nd respondent and sought clarifications with regard to filing of the e-bid. According to him, he was informed that he would be given an e-mail i.d. and password using which he should submit his e-bid.

11. On 05.06.2018, the petitioner registered on the portal of the 1st respondent-Bank and received the e-mail from the support team of 2nd respondent informing petitioner about the user name and password for logging on to participate in the e-auction.

12. According to petitioner, on 06.06.2018, the date of the auction, the petitioner tried to log on to the website in order to place his bid, but was unable to do so. He alleged that he immediately contacted the support staff of 2nd respondent and informed about his difficulty in logging on to the website and placing his bid for the e-auction, that he had also made several phone calls to the 2nd respondent, but the problem of logging in and submitting his e-tender was not resolved.

13. According to him, the 2nd respondent, in order to absolve of its liability sent an e-mail at 11:50 a.m. on 06.06.2018 asking the petitioner to log on to the web-site and place his bid immediately and that they have been trying to contact him repeatedly. The petitioner contends that the problem of logging on to the web-site was not resolved by the 2nd respondent despite constant follow-up from his end and in the mean time his opportunity to bid lapsed and the auction got closed.

14. According to petitioner, he could not submit his bid despite best efforts and constant follow-up from his end with the 2nd respondent, and for no fault of his, the petitioner was deprived of an opportunity to upload his bid, and therefore, the e-auction conducted by the 1st respondent from the 2nd respondent on 06.06.2018 ought to be set aside.

<u>The stand of the 1st respondent</u>

15. The 1st respondent filed a counter blaming the petitioner for not logging in. It stated that the 3rd respondent became the successful auction purchaser for Rs.55,45,000/- , that his was the sole bid received, that it was accepted by the 1st respondent, and the authorized officer issued sale confirmation letter on receipt of 25% of the bid amount.

16. It is also alleged that the 1st respondent was informed by the 2nd respondent that petitioner was not having proper system arrangement compatibility for bidding and participating in the e-auction at that point of time, and there were no lapses on the part of the 2nd respondent which is the e-auction agency. The 1st respondent, thus, blamed the petitioner for his inability to participate in the e-auction held on 06.06.2018.

17. While admitting that 2nd respondent sent e-mail to petitioner in response to his phone calls, the 1st respondent denied that there was any problem with regard to logging on to the web-site which was not resolved by the 2nd respondent despite constant follow-up from his end. It, therefore, prayed that the Writ Petition be dismissed.

18. No counter affidavit was filed by 2nd respondent.

Events after filing of the W.P

19. On 12.06.2018, in Interlocutory Application No.1 of 2018 in Writ Petition No.19383 of 2018, after perusing the material filed by petitioner, this Court directed stay of all further proceedings pursuant to the e-auction conducted on 06.06.2018 of the above properties.

20. The 3rd respondent filed Interlocutory Application No.3 of 2018 to vacate the said order.

The stand of the 3rd respondent

21. The 3rd respondent contended that she was the highest bidder and that she quoted Rs.55,45,000/-, and an interim certificate dt.06.06.2018 was issued in her favour stating that she was the highest bidder.

22. In the counter-affidavit it is stated that though the 3rd respondent had deposited Rs.13,86,250/- being 25% of the bid amount on the date of the auction on 06.06.2018, she was informed by the Bank on 12.06.2018 of the stay granted by this Court, and so, she did not deposit the balance 75% of the bid amount and that she was ready to pay it. According to her, the Bank had expressed its inability to complete the sale formalities on account of the stay granted by the Court, and so, the balance amount of Rs.41,58,750/- was not paid.

Other events pending W.P

23. On 23.09.2019, this Court directed the digital / hard copy of the record pertaining to the auction to be produced by the 1st respondent.

24. Thereafter, the matter underwent several adjournments on 27.09.2019, 15.10.2019, 17.10.2019, 28.10.2019, 05.11.2019, 07.11.2019, 14.11.2019 and 19.11.2019. The 2nd respondent's record was produced by the 1st respondent relating to the auction.

The consideration by the Court

25. The log of the website of the 1st respondent-Bank submitted by the 2nd respondent showed that between 11:22 a.m. and 11:30 a.m., five attempts had to be made by the 3rd respondent also to log in and participate in the auction.

26. This *prima facie*, in our opinion, indicates that there was a *glitch* in the website which required repeated attempts to log in and though the 3rd respondent, after several attempts could log in, the petitioner was not lucky enough to be able to log in within the short-time available.

27. Also, when there was only a single bidder, i.e., the 3rd respondent and even the said bidder did not pay the balance sale consideration within (15) days of the date of auction as mandated by Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, we are of the opinion that the e-auction conducted on 06.06.2018 cannot be sustained and it ought to be set aside.

28. The plea of both the respondents that the Writ Petition is not maintainable and that the petitioner should avail the remedy under Section 17 of the Act cannot be countenanced, because there are no serious disputed questions of fact, and there is denial of opportunity to the petitioner to participate in the e-auction on account of a technical *glitch* in the web-site of the 1st respondent which was not rectified by the 2nd respondent, and thereby, the petitioner stood prejudiced.

29. Accordingly, the Writ Petition is allowed. The e-auction conducted by the 1st respondent for sale of the above properties of the borrower on 06.06.2018, and the sale confirmation letter issued by the 1st respondent to the 3rd respondent, are both set aside. The 1st respondent is directed to refund the E.M.D. paid by both the petitioner as well as the 3rd respondent and conduct a fresh e-auction of the above properties of the borrower by following the provisions of the Act and the Rules scrupulously within (1) month from the date of receipt of copy of this order.

30. Consequently, Interlocutory Application No.3 of 2018, which was filed to vacate the order dt.12.06.2018 passed in Interlocutory Application No.1 of 2018 in Writ Petition No.19383 of 2018, is dismissed. No order as to costs.

31. As a sequel miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 20-12-2019
Ndr