HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.39559 of 2017 and 1301 of 2018

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

1) While the second writ petition is by the wife of the borrower, the first writ petition is by the successful bidder in an auction conducted under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act").

2) Heard Mr.C.Kumar, learned counsel for the petitioner in the first writ petition, Mr.V.V.Ramana, learned counsel representing Mr.K.V.Seshagiri Rao, learned counsel for the petitioner in second writ petition and Mr.Mallikarjuna Rao, learned counsel appearing for the bank.

3) One Mr.Padmanabha Chettiar availed a loan from the respondent-bank way back in the year 2004 and created a security interest in favour of the bank by executing a mortgage by way of deposit of title deeds. It appears that the account became a non-performing asset forcing the bank to issue a notice under Section 13 (2) of the Securitization Act, on 07.07.2009.

4) After the issue of demand notice under Section 13 (2) of the Securitization Act, the borrower seems to have executed an agreement of sale dated 31.05.2011 in favour of one

Mr.G.Sreedharan. Subsequently, the borrower Mr.Padmanabha Chettiar died on 25.07.2013.

5) But unfortunately a possession notice under Section 13 (4) of the Securitization Act was issued on 05.08.2013 in the name of the dead person. Thereafter, the bank also proceeded to issue a sale notice on 04.12.2014 fixing an auction to be held on 19.01.2015. In the auction so held on 19.01.2015, one Smt.Inja Alivela, who is the petitioner in the first of these two writ petitions, became the successful bidder and she also paid 25% of the bid amount on the same date.

6) It appears that the agreement holder Mr.G.Sreedharan, took recourse to two remedies namely (1) a suit for specific performance of the agreement of sale dated 31.05.2011 in O.S.No.56 of 2015 and (2) an appeal in S.A.No.30 of 2015 under Section 17 of the Securitization Act. It appears that in the suit for specific performance, the petitioner in the second writ petition, who is the legal heir of the deceased-borrower remained *ex parte* and the bank alone is contesting in the suit. In the appeal filed by the agreement holder under Section 17 of the Securitization Act, the Debts Recovery Tribunal has reserved orders.

7) At that stage, when the bank attempted to take physical possession of the property by filing an application under Section 14 of the Securitization Act before the Chief Metropolitan Magistrate, Cyberabad, the borrower’s wife came up with W.P.No.1301 of 2018 challenging not only the order of the Chief

Metropolitan Magistrate under Section 14 of the Securitization Act but also challenging the demand notice dated 07.07.2009 and the possession notice dated 05.08.2013.

8) A little earlier in point of time, the successful bidder in the auction came up with the first writ petition W.P.No.39559 of 2017 seeking a direction to the Authorised Officer to issue sale certificate and to deliver possession of the property. Therefore, both the writ petitions were clubbed together for hearing.

9) Insofar as the first writ petition filed by the successful bidder in the auction is concerned, it is seen that the auction was held on 19.01.2015. The successful bidder, who is the petitioner in W.P.No.39559 of 2017, has already paid 25% of the bid amount. Now a period of more than four years has elapsed. There was actually no stay of the execution of the sale certificate and the registration there of. As a matter of fact, the bank informed the successful bidder by its letter dated 19.01.2015 that the sale was confirmed in her favour and that the balance 75% of the amount was to be paid on or before 03.02.2015. It was made very clear by the letter dated 19.01.2015 that if the balance amount was not paid on or before 03.02.2015 the auction will stand cancelled and the amount already paid will be forfeited. But still the successful bidder did not pay the money.

10) Even after the amendment to the Security Interest (Enforcement) Rules, 2002, the maximum time limit available for the successful bidder to make payment of the balance sale

consideration is only three months, subject to an agreement between the purchaser and the secured creditor. Rule 9 (4) of the Security Interest (Enforcement) Rules, 2002, after its amendment with effect from 04.11.2016 reads as follows:

> "9 (4). The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months."

11) As on date there has been no consent between the successful bidder and the secured creditor. Therefore, the successful bidder cannot today seek to enforce the sale in the form of amendment. Hence, the writ petition filed by the successful bidder in W.P.No.39559 of 2017 is liable to be dismissed.

12) However, the question as to what should be happen to the amount paid by the successful bidder has to be answered.

13) As on date the bank has not found fault with the successful bidder and the bank has not ordered the forfeiture of the amount of 25% already paid by the successful bidder. As a matter of fact, the bank even now is prepared to receive the balance sale consideration. But we are unable to grant a seal of approval to such consent on the part of the bank. Therefore, it is clear that the blame cannot entirely lie at the doorstep of the successful bidder. Hence, while rejecting the claim of the successful bidder

in W.P.No.39559 of 2017 for a direction to the bank to issue sale certificate and deliver possession, we direct the bank to return the amount of 25% already paid by the successful bidder, to her together with interest at 6% per annum within four weeks.

14) Insofar as the writ petition W.P.No.1301 of 2018 filed by the borrower's wife is concerned, the theme of the song in the entire writ petition is that despite having knowledge of the death of the borrower on 25.07.2013, the bank issued possession notice on 05.08.2013 in the name of the dead person and also obtained an order under Section 14 of the Securitization Act from the Chief Metropolitan Magistrate by showing the name of the dead person as the sole respondent. Therefore, the contention of the borrower's wife is that all the measures taken under Section 13 (4) of the Securitization Act as against the dead person are completely null and void.

15) It is no doubt true that the proceedings against the dead persons are null and void. The fundamental premise on which this principle was developed is that the persons, who have a say in the estate of the deceased, should be on notice of what is happening. If proceedings are allowed to take place against dead persons, persons who lawfully have a claim to the estate of the deceased will never know about the proceedings and this is the reason behind the rules developed under Order XXII Rule 4 of C.P.C. But the case on hand is a very strange case where the borrower entered into an agreement of sale-cum-General Power of Attorney

with possession on 31.05.2011, after two years of the issue of the demand notice under Section 13 (2) of the Securitization Act. The demand notice under Section 13 (2) of the Securitization Act was issued on 07.07.2009. Once a demand notice is issued under Section 13 (2) of the Securitization Act, no borrower can transfer the property by way of sale, lease or otherwise. This is by virtue of Section 13 (13) of the Securitization Act. Therefore, in gross violation of the mandate of Section 13 (13) of the Securitization Act, the borrower executed an agreement of sale-cum-General Power of Attorney with possession on 31.05.2011, after two years of the issue of the demand notice on 07.07.2009.

16) Despite this, the stand taken by the borrower's wife before this Court is that the agreement is valid and binding on her. In the suit for specific performance filed by the agreement holder in O.S.No.56 of 2015, the borrower's wife, who is the petitioner in W.P.No.1301 of 2018, has remained *ex parte.* But in the writ petition filed before us she has categorically admitted (1) the execution of the agreement of sale-cum-General Power of Attorney with possession (2) the handing over of the possession and (3) the receipt of the entire sale consideration.

17) Thus, the wife of the borrower has actually surrendered the interest that she had in the property, to the agreement holder and the agreement holder has already gone to the Debts Recovery Tribunal by way of appeal under Section 17 of the Securitization Act in S.A.No.13 of 2015. Therefore, at the instance of a person,

who is no doubt a legal heir but who has surrendered her right in the estate of the deceased to the agreement holder, we would not test the correctness of the order by the Chief Metropolitan Magistrate under Section 14 of the Securitization Act. Therefore, W.P.No.1301 of 2018 is dismissed.

18) Accordingly, both the writ petitions are dismissed. Consequently, miscellaneous petitions, if any, pending in these writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

February 28, 2019
gkv

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos. 39559 of 2017 and 1301 of 2018

Date: 28.02.2019

gkv