

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WP. No. 16410 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. Heard counsel for petitioner, Sri Ambadipudi Satyanarayana, counsel for 1st respondent, and Sri T.Surya Satish, counsel for 2nd respondent.

2. The 2nd respondent in the Writ Petition had borrowed money from the 1st respondent by creating a mortgage of the A-Schedule properties mentioned in the Notice dt.04.06.2015 under Section 13(2) of the SARFAESI Act, 2002 (for short 'the Act') issued by the 1st respondent.

3. The dues of the 2nd respondent rose to Rs.7.46 Crores as on 31.03.2015 and notice under Section 13(2) was issued by the 1st respondent to the 2nd respondent, and to respondents 3 and 4, who are directors of the 2nd respondent-company.

4. Possession Notice under Section 13(4) of the Act was also issued on 19.11.2015, and sale notice was issued on 28.04.2017 proposing to sell Acs.100.34 guntas situated at Lonikhurd – Garlapally Village, Munpally Mandal, Medak District and another sale notice was issued on 13.04.2017 for sale of Acs.103.20½ guntas situated at Maddikunta village, Sadasivapeta Mandal, Sanga Reddy District.

5. The auction of the 1st item was conducted on 14.06.2017 and the auction of the 2nd item was conducted on 30.05.2017.

Petitioners 1 and 2 became the successful bidders by quoting an amount of Rs.4.62 Crores for item No.1 in the auction held on 14.06.2017, and petitioner No.3 and others became successful bidders for item No.2 quoting Rs.8,28,10,000/- in the auction held on 30.05.2017.

6. Petitioners 1 and 2 on 15.06.2017 paid Rs.1,15,50,000/- and obtained confirmation letter from the 1st respondent and this amounted to 25% of their bid amount. Petitioner No.3 and other two purchasers, who are successful bidders for item No.2, paid Rs.2,09,52,500/-(25% of their bid amount) on 31.05.2017 and also received confirmation letter.

7. Respondents 2, 3 and 4 however filed SA.No.695 of 2017 questioning the sale of both items(*old SA.No59 of 2016*) and there was an interim order passed on 12.06.2017 as far as item No.1 and item No.2 on 29.05.2017 by the Debt Recovery Tribunal-II at Hyderabad.

8. The petitioners in the Writ Petition got impleaded as respondents 2 to 4 in SA.No.695 of 2017 on 21.03.2018.

9. The matter was reserved by the Debt Recovery Tribunal for orders on 12.03.2019 and it directed it to be listed on 12.04.2019 for pronouncement of orders, but on 12.04.2019 the 1st respondent filed a Memo before the Debt Recovery Tribunal stating that it had accepted the OTS offer of respondents 2 to 4 and received Rs.12.54 Crores and the SA need not be decided.

10. Accepting the said statement, on 30.04.2019 the Debt Recovery Tribunal dismissed the SA.

11. Petitioners then filed this Writ Petition on 31.07.2019 contending that the 1st respondent should have finalized the auction sale consequent upon the dismissal of SA.No.695 of 2017 and received the balance 75% of sale consideration of the bid amount from the petitioners and issued sale certificate to them in respect of both items of property.

12. Under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, framed under the SARFAESI Act, 2002, it was the duty of the petitioners to pay 75% of the bid amount to the authorized officer on or before 15th day of confirmation of sale of the immovable property or such extended period, as may be agreed upon in writing between the petitioners and the 1st respondent.

13. Though counsel for the petitioners contended that in spite of the offers made by the petitioners to pay the balance amount the 1st respondent-Bank did not take any action, since there is no material to show that the petitioners had made such offer within the period of 15 days mentioned in sub-Rule (4) of Rule(9) or that there was any written agreement extending time to make such payment between the petitioners and the 1st respondent-Bank, we do not accept the said plea.

14. The petitioners thus did not deposit the balance amount within the time specified in sub-Rule(4) of Rule 9.

15. Having not complied with the mandate of the statute, it is not open to the petitioners to contend that since they had deposited the amounts representing 25% of the sale consideration of items 1 and 2 on 14.06.2017 and 30.05.2017, it was obligatory on the part of the 1st respondent-bank to issue sale confirmation letters to them.

16. The auction in favour of the petitioners was subject to the result of the SA and once the SA was closed on 30.04.2019 on settlement between the respondents 1 to 4, it is not open to the petitioners to insist that the auction be confirmed and the balance amount be received from them.

17. Therefore, the Writ Petition is disposed of directing the 1st respondent-bank to refund the amount deposited by the petitioners towards purchase of the above two items with interest @ 8% per annum from the date of deposit till the date of realization within a period of three weeks. No order as to costs.

18. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

27th January, 2020.

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