

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1900 of 2020**

1. M/s S. J. Rice Mills, A Proprietorship Firm Through Proprietor Mala Phally Joseph Village Birebhat, Ahiwara, Tehsil Dhamdha District Durg Chhattisgarh
2. Mala Phally Josepph through Proprietor M/s. S.J. Rice Mills, Village Birebhat, Ahiwara, Tehsil Dhamdha, Dist- Durg (CG)

---- Petitioners**Versus**

1. Bank Of Baroda Through Branch Manager, Having Office At Civic Centre, Bhilai Branch, Bhilai, District Durg Chhattisgarh
2. Recovery Officer Debt Recovery Tribubal, 797-II, Shanti Kunj, South Civil Lines, Jabalpur M. P.

---- Respondents

For Petitioners : Shri Syed I. Ali, Advocate

For Respondent No.1 : Shri Om Kukreja, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order****25/03/2021**

1. Heard.
2. Learned counsel for the petitioners would submit that the respondents have valued the property of the petitioners at lower price to sale it which they are going to sale, therefore, the sale as proposed of the secured assets of the petitioner may be stayed.
3. Learned counsel for respondent No.1 would submit that this is the second round of litigation in respect of the same property. On the earlier round, the

petition was filed by the petitioner bearing WPC No.976/2020 wherein this Court on 19.03.2020 has passed the following order:-

- “1. The challenge in the present writ petition is to the sale notice issued by the respondent No.1 on 19.02.2020 and the paper publication made in this regard in the daily newspaper having wide circulation.
2. The primary contention of the petitioners in challenging the writ petition is the rate quoted for the properties for auction. According to the petitioners, the valuation report that was got prepared by the respondent No.1-Bank way back in the year 2014 & 2015 would show that the value of the land was roughly more than Rs.84 lakhs, whereas now the auction is being conducted at a substantially reduced value of just about Rs.31 lakhs. Thus, the petitioners would be substantially put to loss, if the property of the petitioners is auctioned at cost lower than what it was valued 5-6 years back whereas the property value or the market value during these 5-6 years has increased substantially.
3. At the outset, this Court is of the opinion that challenge to the sale notice initiated by the respondent No.1 -Bank is also one which is assailable under Article 17(1) of the “SARFAESI ACT” before the Debts Recovery Tribunal (DRT) and since the date of auction is said to be on 23.03.2020, the petitioner can still approach the Tribunal for ventilating their grievance.
4. Given the said facts, this Court is of the opinion that the writ petition at this juncture would not be maintainable. The right of the petitioners stands reserved to approach the concerned DRT for ventilating their grievance under Section 17(1). Subject to the petitioners moving an application, it is expected that the Tribunal shall hear the same promptly.
5. With the aforesaid observations, the present writ petition stands disposed of.”

It is submitted that again in respect of the same property again the fresh notice has been issued for sale against which the instant petition has been filed.

4. Perusal of the order passed by this Court on earlier occasion on 19.03.2020 and perusal of the documents would show that earlier when the sale notice was

issued in respect of the same property, it was subject of challenge, wherein the petitioner was given liberty to approach the Debts Recovery Tribunal for filing the petition under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act) presumably, the petitioner has not availed such remedy and again filed the instant petition when the fresh notice was issued. Therefore, since the order already exist and as per Section 17 (1) of the SARFAESI Act, the petitioner has to approach the DRT, any observation made by this Court would amount to review its earlier order passed on 19.03.2020, therefore, I am not inclined to entertain this petition.

5. Accordingly, the petition is dismissed.

Sd/-

Goutam Bhaduri
Judge

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