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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision:28.01.2021**

% W.P.(C) 8749/2020 & CM APPL. 28188/2020

LALIT MOHAN AGGARWAL AND ANR ..... Petitioners

Through: Mr. Ajay Sharma, Adv.

versus

ANDHRA BANK AND ORS ..... Respondents

Through: Mr. N.P. Gaur, Adv for R-1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The present petition preferred by the auction purchaser assails the order dated 13.03.2020, passed by the Debts Recover Appellate Tribunal, Delhi (DRAT). Under the impugned order, the DRAT has – while allowing the appeal preferred by the mortgager Mr.Atul Gupta being Appeal No. 498/2018, set aside the auction sale of the mortgaged property in favour of the petitioner held on 21.07.2015.

2. The mortgager i.e Mr.Atul Gupta had preferred a securitisation application being S.A. No. 73/2015 before the Debts Recovery Tribunal (DRT) to challenge the auction sale of the mortgaged property under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

3. The DRT vide its order dated 08.05.2018 in I.A. No. 1846/2015 rejected the mortgagor's plea that the auction was vitiated and liable to be set aside as the requisite notice required under rule 8(6) of the Security Interest (Enforcement) Rules, 2002 was never served upon him.

4. The learned DRAT vide its impugned order has reversed the said order passed by the DRT and has agreed with the contention of the mortgagor that no notice under rule 8(6) regarding the auction sale held on 21.07.2015 was served on him and, therefore, the auction was vitiated. While coming to the said conclusion, the DRAT has relied upon the decision of the Supreme Court in ***Mathew Varghese vs. M. Amritha Kumar & Ors.[(2014) 5 SCC 610]***.

5. The DRAT while allowing the appeal has set out the relevant extract of the DRT's order dated 08.05.2018, which reads as under:-

> *"31. Heard and the arguments have been heard on behalf of all the respective counsels of the parties at length and the record has been perused thoroughly. So far as, the issue of notice is concerned, it is admitted fact that the auction/sale was conducted on 21.07.2015 and 30 days' notice under Rule 8(6) of Rules, 2002 was duly served on 05.03.2015 by the respondent bank and publication was also affected on 19.06.2016 in the newspapers Hindustan Times and Amar Ujala. The notice dated 15.05.2015 was also duly addressed to the applicant/ director /borrower /guarantor/mortgagor as apparently seen from the letter as well as registered postal receipt placed on record.*

32. In this context, it is worthwhile to be mentioned that the purpose of giving 30 days' notice under Rule 8(6) of Rules, 2002 is to get aware the borrower/guarantor/mortgagor about conducting the sale to enable them to clear the dues of the secured creditors and also acknowledge the proposed bidder to verify the status of the property during this period. Apparently, the due notice was given to the applicant/ borrower/ guarantor/ mortgagor/ director and even otherwise, the applicants were well aware of the facts that the sale of the property in question was being conducted by the respondent bank, which stands fortified from the application being I.A. no.506 of 2015 moved by Ms. Ritesh Gupta - one of the director the applicant company on 02.03.2015 for restraining the respondent bank from taking measures in terms of sale notice dated 24.01.2015 and another application moved in the month of April, 2015 for quashing the sale notice dated 21.03.2015. Accordingly, the Ld. Predecessor of this Tribunal, vide order dated 24.04.2015, clearly held that the sale will be subject to outcome of this S.A. and in the said order, it was also mentioned that it was fourth time, they were putting the property on auction. Hence, the present applicants were continuously observing and knew about the auction proceedings, which was being held from time to time by the respondent bank.

33. Though, Ld. Counsels for the respective parties have relied upon the citation of Mathew Varghese Vs. M. Amritha Kumar & Ors. - MANU/SC/ 0114/2014 and the said citation clearly laid down that " ... Sub-rule (6) of Rule 8 and Sub-rule(1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time gap for effecting any sale of immovable secured asset is a statutory mandate .... ". In this matter, the said provisions were duly followed by the respondent bank and the applicants were having got more than

30 days prior notice with respect to the auction conducted on 21.07.2015. Accordingly, the said issued stands decided against the applicant."

6. The submission of learned counsel for the petitioner is that the learned DRAT has failed to appreciate that the mortgagor had been duly put to notice of the proposed auction sale inasmuch as repeated notices were issued to him informing him that the property in question would be put to public auction and that the date, time and other particulars of the said auction would be notified. Learned counsel submits that in pursuance of the said notices issued to the mortgagor, publication was affected in Hindustan Times and Amar Ujjala newspapers on 19.06.2015 clearly stating that the subject property would be put to auction on 21.07.2015. Thus, according to the petitioner, the mortgagor had ample notice in terms of aforesaid rule 8(6). Our attention has been drawn to the notices dated 05.03.2015 and 15.05.2015 issued to the mortgagor. We, however, find that neither of these notices informed the mortgagor of the specific date or place for holding of the auction. All that they informed to the mortgagor was that the property would be put to auction on account of non-liquidation of the dues owed by the borrower to the respondent/Bank. Both these notices contained the following statement:-

> "*The date of and time of auction and the details of the service provider shall be informed through a Sale Notice which shall be issued separately, and the property would be sold to the person who offers highest price."*

7. Thereafter, it is evident that no specific notice was issued to the mortgagor in terms of rule 8(6) of the Security Interest (Enforcement) Rules,

2002, informing him of the actual date, time and place of the public auction. According to the petitioner, the publications made in the newspapers communicating the date, place and time of the auction of the property in question, were sufficient notice in compliance of rule 8(6). The DRAT has found no merit in this submission by placing the reliance on the decision in ***Mathew Varghese (supra)*** and, in our view, rightly so. In fact, we find that the relevant extract from ***Mathew Varghese (supra)*** had been taken note by the DRT itself in para 33 of its decision extracted hereinabove and the same leaves no manner of doubt that a statutory notice is required to be given to a borrower before holding of a public auction of the mortgaged property.

8. If the petitioner's submission – that the publication of notice about the auction in daily newspapers is sufficient notice to the borrower in terms of Rule 8(6), were to be accepted, the very purpose of incorporating rule 8(6) of the Security Interest (Enforcement) Rules, 2002 – which specifically provides that the authorised officer shall serve to the borrower a notice of 30 days for sale of immovable secured asset, would stand defeated. The purpose of this rule is two fold. Firstly, to enable the borrower to redeem the mortgage and, secondly, to ensure that even if he is unable to redeem the mortgage, he has the opportunity to bring genuine and serious buyers at the auction so that his property is sold at the highest possible price and does not go for a song. This is more so because the public notice issued in the newspapers may not attract enough genuine buyers. If the public notice published in the daily newspapers were sufficient notice to the borrower, there was no need to incorporate Rule 8(6) in the aforesaid Rules. The

purpose of the publication in the Newspapers is primarily to invite the public at large to participate in the public auction.

9. We are, therefore, clearly of the view that a notice to the borrower under rule 8(6) of the Security Interest (Enforcement) Rules, 2002 is a mandatory requirement laid down by the statute, and failure to issue such a notice would vitiate the auction itself.

10. For the aforesaid reasons, we do not find any merit in the petition. The same is accordingly dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

JANUARY 28, 2021
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