S/L. 23.
August 18, 2022.
MNS.

WPA No. 18700 of 2022

Sk. Nasir Mohammad and another
Vs.
UCO Bank and another

Mr. Ranjan Kali,
Ms. Mitul Chakraborty,
Ms. Anindita Maity,
Ms. Mili Saha

… for the petitioners.

Mr. Saptanshu Basu,
Mr. Samrat Mukherjee

…for the respondent-bank.

Affidavit-of-service filed in Court today be kept on record.

The petitioners contend that the e-auction sale notice dated June 28, 2022 suffers from several infirmities, both legal and factual.

It is contended that the provisions of Rule 8, sub-rules (5), (6) and (7) of the Security Interest (Enforcement) Rules, 2002 (2002 Rules) have been grossly violated. It is submitted that prior to obtaining valuation of the property-in-question, the borrowers, that is, the present writ petitioners, were not given any notice or opportunity of addressing such valuation, which is palpably to the detriment of the borrowers.

Inasmuch as sub-rule (6) is concerned, learned counsel for the petitioners argues that the authorised officer has to, mandatorily, serve to the borrower a notice of thirty days for sale of the immovable secured assets under sub-rule (5), which has also not been served in the present case.

Regarding sub-rule (7) of Rule 8, it is contended that the provisions of the same have not been complied with properly as well in the present case.

Learned counsel further places reliance on Rule 9(1) of the 2002 Rules to contend that the provisions of the said sub-rule have also not been adhered to in the present process of e-auction sale.

Learned counsel places reliance on a co-ordinate Bench judgement dated August 3, 2022 passed in WPA 17412 of 2022 in this regard.

The learned Senior Advocate appearing for the respondent-bank controverts and refutes all the submissions of the petitioners.

In so far as Section 8(5) of the 2002 Rules is concerned, it is argued that there is no mandate under the statute to serve a prior notice before valuation of the property on the borrower.

As far as sub-rule (6) is concerned, the learned Senior Advocate submits that the borrowers, that is, the writ petitioners were duly served a notice under the said clause.

It is also submitted that the notice of sale did not suffer from any infirmity or irregularity.

As regards the other allegation raised by learned counsel for the petitioners, the learned Senior Advocate argues that there were several notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act) issued in respect of different properties in the context of the same loan. As such, the date of notice as given in the e-auction notice, which has been annexed to the writ petition (Annexure- P1 ate page 15), pertains to a different property, which has also been mentioned in the said notice.

The learned Senior Advocate submits that the sale itself, in respect of which the e-auction notice was given and challenged in the present writ petition, was concluded on July 19, 2022. It is further contended that the sale notice dated July 28, 2022 was duly served on July 29, 2022.

Inasmuch as the contention of the petitioners in respect of purported vacancy of the

DRT-III Bench is concerned, where the petitioners' application under Section 17 of the 2002 Act is pending, it is submitted that the said application was filed on July 27, 2022 whereas the said Bench became vacant on and from August 2, 2022.

However, such fact is controverted by learned counsel for the petitioners, who submits that the date of superannuation of the Presiding Officer of the said Bench was July 30, 2022.

Upon hearing learned counsel appearing for the parties, it is clear from the provisions of Rule 8(5) of the 2002 Rules that, as rightly contended by the petitioners, the same does not envisage any prior notice to the borrower before valuation. As such, the said requirement does not exist in law and consequentially the allegation of violation of such non existent provision cannot be accepted as a ground for setting aside the e-auction notice impugned herein.

Rule 8(6), on the other hand, has two prongs. In the first, the authorised officer is required to serve to the borrower a notice of thirty days for sale of immovable secured assets under sub-rule (5). Under the second (proviso) it is indicated that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality. As such, since the present intended sale was by way of a public auction (e-auction), the proviso to Rule 8(6) squarely applies. The annexures to the writ petition itself show that such provision was duly complied with by the respondent-bank. Moreover, the respondents are armed with copies of service of personal notice, given to the petitioner over and above the public notice. Be that as it may, in view of the earlier observation, such personal notice becomes irrelevant.

Rule 8(7) of the 2002 Rules provides for every notice of sale to be affixed on a conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale on the website of the secured creditor. The said sub-rule is followed by several sub-clauses. Sub-clause (f) stipulates that the modes as contemplated under sub-rule (7) may be on any other terms and conditions, which the authorised officer considers it necessary for a purchaser to know the nature and value of the property.

In the present case, the petitioners/borrowers cannot claim to have a defeasible interest in such mode, since the petitioners are in no way concerned with the welfare of the purchasers.

Inasmuch as Rule 9(1) of the 2002 Rules is concerned, the proviso thereto stipulates that if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower for any subsequent sale. As such, in the present case, since this was the third occasion when the subject matter of the proceeding was sought to be sold, the proviso applies and issuance of a notice of fifteen days would suffice.

In so far as the alleged irregularities regarding the dates of the notice under Sections 13(2) and 13(4) are concerned, sufficient reply has been given by the respondents to satisfy the court that several properties were involved in the said process, in respect of some of which the notice under Sections 13(2) and 13(4) was given, as published in the public notice annexed to the writ petition.

That apart, since an application under Section 17 has been filed by the petitioners and the same is pending before the DRT-III and the respondents have substantially complied with all terms and conditions as stipulated in law while issuing the e-auction notice impugned herein, there ought not to be any interference in the writ jurisdiction of this court.

Inasmuch as the contention sought to be raised by the petitioners regarding the valuation being low is concerned, there is nothing on record in the present writ petition to impress upon the court palpably that such undervaluation was done, sufficient to interfere in the present matter.

As far as the unreported judgment of the co-ordinate Bench is concerned, it is seen from the same that, in the facts of the said case, the court observed that the court does not want to get into the merits of the case since the petitioners' application is already pending before the DRT-III. However, since the DRT-III was not functioning since June, 2022, the petitioners were held to be entitled to a limited measure of protection. Accordingly, the Bank was directed not to act in terms of the Section 14 order of the District Magistrate passed in connection with the said proceeding.

The scope and conspectus of the present matter is entirely different, in view of the present challenge being against an e-auction notice, which much preceded the conclusion of the sale, which itself was effected prior to the filing of the writ petition.

That apart, the said observations made by the learned Single Judge do not apply on facts to the present case at all, nor is any general proposition of law found to have been laid down in the said judgment which can have a precedentiary value in the present matter. The judgment was rendered in the facts of the said case.

In such view of the matter, there is no scope of interference in the present writ petition.

It appears that the present writ petition has been preferred merely in an attempt to stall the sale process by the borrowers.

Hence, WPA No. 18700 of 2022 is dismissed with costs of Rs. 10,000/- payable to the respondents within a fortnight from date.

Since no affidavits were directed in the matter, it is deemed that none of the allegations made by any of the parties are admitted by their respective adversaries.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sabyasachi Bhattacharyya, J.)