IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1382 of 2022
With
CAN 1 of 2022

Reserved on: 06.09.2022
Pronounced on: 13.09.2022

Sk. Nasir Mohammad and Another
...Appellants

-Vs-

UCO Bank and Another
...Respondents

Present:-

Mr. Samrat Sen, Senior Advocate
Mr. Abhishek Banerjee,
Ms. Parna Roy Choudhury, Advocates
… for the appellants

Mr. Saptansu Basu, Senior Advocate
Mr. Samrat Mukherjee, Advocate
… for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE

Prakash Shrivastava, CJ:

1. By this appeal, writ petitioner has challenged the order of the learned Single Judge date 18th of August, 2022 whereby WPA No. 18700 of 2022 has been dismissed.

2. The appellant was a defaulting borrower, hence the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act') were initiated and appellant had filed the writ petition aggrieved with the e-auction sale notice dated 28.06.2022.

The appellant had raised the plea of violation of Rule 8(5), 8(6), 8(7), 9(1) of the Security Interest (Enforcement) Rules, 2002 (for short, 'Rules of 2002') and irregularities in issuing notice under Section 13(2) and 13(4) of the SARFAESI Act. Learned Single Judge has examined the grievance relating to the alleged non-compliance or violation of the Rules of 2002 and has reached to the conclusion that there was no scope of interference in the writ petition and that the writ petition was filed as an attempt to stall the sale proceedings by the borrower and has accordingly dismissed the writ petition.

3. First contention of the learned Counsel for the appellant is that clear 30 days notice as required by 9(1) of the Rules of 2002 was not given. It has been pointed out by the learned Counsel for the respondent bank that it was third attempt to sell the property in question, hence in terms of proviso to Rule 9(1) of the Rules of 2002 only 15 days notice was required which was duly complied with. Hence, we find no force in the submission of the Counsel for the appellant.

4. Further argument has been advanced by the learned Counsel for the appellant that no prior notice at the time of valuation of the asset was given. Learned Single Judge has duly taken note of the Rule 8(5) of the Rules of 2002 and has rightly noted that the Rule does not prescribe for any prior notice to the borrower before the valuation.

5. Further submission of the learned Counsel for the appellant is that for each fresh auction sale, fresh valuation is necessary and in this regard he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Mathew Varghese vs. M. Amritha Kumar and Others** reported in **(2014) 5 SCC 610** and the Division

Bench judgment of the High Court of Andhra Pradesh and Telangana at Hyderabad in the matter of **M/s. Pochiraju Industries Ltd. vs. Punjab National Bank and Others** reported in **AIR 2019 Hyd 61**. No express provision requiring fresh valuation prior to each sale has been shown. On the contrary learned Counsel for the respondent bank has pointed out that valuation of the asset was done on 06.04.2022 and the sale notice was issued on 28.06.2022, hence the gap between the valuation and the sale notice was not so much which could lead to presumption of increase in the price in the meanwhile.

6. Reliance of learned Counsel for the appellant on paragraphs 33, 43, 53 of the judgment of the Hon'ble Supreme Court in the case of **Mathew Varghese (supra)** is misplaced because in these paragraphs no such proposition of law requiring fresh valuation before each successful auction notice has been laid down. Similarly on the basis of the Division Bench judgment of the Andhra Pradesh High Court in the case of **M/s. Pochiraju Industries Ltd. (supra)** it cannot be held that if the auction sale is within close proximity of time of the valuation report, then also fresh valuation before the auction should be done. Hence, we find no substance in such an argument.

7. That apart, learned Counsel for the respondent bank has also pointed out that the sale has already taken place on 09.07.2022 and sale certificate has been issued on 27.07.2022 and possession has also been handed over to the purchaser. The purchaser has not been impleaded in the writ petition. This furnished another ground to dismiss the appeal.

8. At the end, learned Counsel for the appellant has submitted that since the appellant has already filed an application before the

DRT which is pending, therefore, he may be permitted to prosecute his pending application and DRT may consider the application without being influenced by the observation made by the learned Single Judge. Learned Counsel for the respondent bank has no objection to the same. Hence, the appellant is permitted to prosecute his pending application before the DRT on other grounds and the DRT will be at liberty to decide the same expeditiously without being influenced by the observation made in the order of the learned Single Judge or in this order.

9. The appeal is according disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.09.2022

PA(SS)

(A.F.R./N.A.F.R.)