**HONOURABLE SRI JUSTICE UJJAL BHUYAN**

**AND**

**HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY**

**Writ Petition No.4043 of 2021**

**ORDER :** *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Alladi Ravinder, learned counsel for the petitioners and Mr. Murali Manohar, learned counsel for respondent Nos.1, 2 and 3. Insofar added respondent No.4 (original borrower), he was duly served in terms of the order dated 21.02.2022. But for default, Court decided to proceed *ex parte* against him by the aforesaid order.

**2.** It appears that respondent No.4 was a borrower of respondent Nos.1, 2 and 3, but defaulted in repayment of loan for which respondent Nos.1, 2 and 3 invoked provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act').

**3.** In consequence of the above, respondent No.2 issued sale notice for sale of the scheduled property on 03.08.2020. As per the sale notice, outstanding dues of the borrowers was quantified at Rs.75,46,576.00. The reserve price of the schedule property was fixed at Rs.86,25,000.00 and Earnest Money Deposit (EMD) at Rs.8,62,500.00.

**4.** E-auction was held on 19.08.2020 in which both the petitioners participated. In fact, petitioners were the highest bidders at their bid amount of Rs.86,75,000.00. Petitioners deposited 25% of the bid amount (sale amount) of Rs.21,68,750.00 to the respondents on the date of auction sale which was acknowledged by respondent No.2 vide the letter dated 20.08.2020. By the said letter, petitioners were called upon to pay the balance 75% of the sale amount within (15) days whereafter the sale certificate would be issued and executed.

**5.** On request of the petitioners, respondent No.2 granted time till 12.10.2020 for depositing the balance of the sale amount. Petitioners informed respondent No.2 by letter dated 27.11.2020 that they could not arrange the necessary finance because of the COVID-19 pandemic, and sought for time till 10.12.2020.

**6.** Thereafter, petitioners deposited the balance of the sale amount on 14.12.2020. As per the statement of account placed on record, petitioners have paid the entire amount of Rs.86,75,000.00.

**7.** Learned counsel for the petitioners submits that there is delay of (25) days in making the entire payment (sale amount) for which respondents Nos.1, 2 and 2 are not issuing the sale certificate, besides not registering the same.

**8.** It is with this grievance that the writ petition has been filed.

**9.** Learned counsel for respondent Nos.1, 2 and 3 submits that the said respondents have no objection if the Court directs them to accept the full payment. On their own they are unable to do the same in view of the statutory limitation prescribed in Sub-Rule (4) of Rule 9 of the Security Interest (Enforcement) Rules, 2002 (briefly, 'the Rules' hereinafter).

**10.** Learned counsel for the petitioner has placed reliance on certain orders of this Court as well as of the Supreme Court and submits therefrom that in view of the peculiar facts and circumstances due to COVID-19 pandemic, Court may take a liberal view and relax the limitation prescribed under Sub-Rule (4) of Rule 9 of the Rules.

**11.** We have duly considered the submissions made by learned counsel for the parties.

**12.** Rule 9 of the Rules deals with the time and sale, issue of sale certificate and delivery of possession.

**13.** As per Sub-Rule (3), the successful bidder shall pay on the same day or not later than the next working day an amount equivalent to 25% of the sale price, inclusive of the EMD to the authorized officer conducting the sale.

**14.** Sub-Rule (4) says that the balance amount of the purchase price shall be paid by the purchaser to the authorized officer on or before the 15$^{th}$ day of confirmation of sale, or within such extended period which may be agreed upon in writing between the purchaser and the secured creditor. But such extended period should not exceed three months. The consequences of default are laid down in Sub-Rule (5).

**15.** In the present case, the initial deposit of 25% was made on the day of auction sale i.e., on 19.08.2020. The balance of 75% was paid (25) days later than the period of (90) days, i.e., on 14.12.2020.

**16.** A coordinate Bench of this Court in Writ Petition No.2875 of 2021, decided on 15.04.2021, permitted the auction purchaser to pay the sale amount within four (4) weeks after expiry of the extended period, and further directed the concerned bank to confirm the sale and to register the sale certificate.

**17.** In **Alisha Khan vs. Indian Bank, Allahabad Bank**[1], decided on 13.12.2021, Supreme Court interfered with the order of the High Court in forfeiting the initial deposit of 25% of the auction purchaser for failure to pay the balance 75% payment within the stipulated period. In the said order, Supreme Court directed the concerned bank to refund the deposit of 25%.

**18.** In **Suo-Motu Writ Petition (C) No.3 of 2020, decided on 10.01.2022**[2], Supreme Court took cognizance of the difficulties faced by the litigants in filing petitions, applications, suits, appeals and all other quasi judicial proceedings within the period of limitations prescribed by the statutes, due to outbreak of COVID-19 pandemic. Thereafter, Supreme Court directed, amongst others, that the earlier orders extending limitation stood restored and that the period from 15.03.2020 till 28.02.2022 would

---

[1] SLP (C) No.15959-15969 of 2021, dated 13.12.2021
[2] 2022 SCC OnLine SC 27

stand excluded for the purpose of limitation as may be prescribed under, in general or in special laws, in respect of judicial or quasi-judicial proceedings.

**19.** From the above orders, it can be safely inferred that Courts have taken judicial notice of the extraordinary situation prevailing in the country because of the outbreak of COVID-19 pandemic and the resultant hardship faced by the citizens.

**20.** In such circumstances, and having regard to the spirit of the order of the Supreme Court as alluded to herein above, we are of the view that the present is a fit case where the rigour of the law in terms of the Sub-Rule (4) of Rule 9 may be relaxed.

**21.** While coming to this conclusion, we may re-state that respondent Nos.1, 2 and 3 have taken a clear stand that they are not opposed to acceptance of the amount paid by the petitioners. Further, no one has placed any objection to this in the present proceeding. That being the position, the sale amount deposited by the petitioners be accepted by respondent Nos.1, 2 and 3 who shall, thereafter, issue the sale certificate within a period of fifteen (15) days from the date of receipt of a copy of this order which shall be duly registered with the registering authority.

**22.** This disposes of the writ petition. No costs.

**23.** As a sequel, miscellaneous petitions pending if any in this writ petition, shall stand closed.

**UJJAL BHUYAN , J**

**A. VENKATESHWARA REDDY, J**

Date: 02-03-2022
Ndr/Sha