

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.16095 of 2018 (O&M)

Reserved on 16.05.2022

Date of Decision: 24.05.2022

VIJAY MADAN AND OTHERS

.....Petitioners

V/s.

PUNJAB NATIONAL BANK AND OTHERS

.....Respondents

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aalok Jagga, Advocate,
 for the petitioners.

 Mr. Arvind Rajotia, Advocate
 for respondent No.1.

 Mr. Sameer Rathaur, Advocate,
 for respondents No.4 and 5.

M.S. RAMACHANDRA RAO, J.

Background facts

Petitioner No.1 is one of the partners of the firm i.e. M/s S.L.N. Industries (hereinafter referred to as “Firm”) and petitioners No.2 and 3 are Gurantors/Mortgagors to the loan taken by the said Firm from the Punjab National Bank (Respondents No.1 to 3).

The Firm had availed a Cash Credit Limit of ₹1 Crore from respondents No.1 to 3-Bank on 08.07.2009 on certain terms and conditions against the hypothecation of goods, which was further secured by the personal guarantee of the petitioners No.2 and 3 who also created equitable mortgage on their House No. 254, Sector 16-A, Faridabad.

Proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(hereinafter referred to “the Act of 2002”) were initiated by the Bank against the Firm and the petitioners through a notice dt.04.01.2013 issued under Section 13(2) of the Act of 2002 demanding ₹1,03,19,739.73 paise outstanding as on 31.12.2012.

Thereafter, symbolic possession of the residential house of the petitioners No.2 and 3 was taken by the Bank on 13.03.2013.

The said action of the Bank was questioned by the guarantors by filing SA No.73 of 2013 before the DRT-I, Chandigarh.

Vide order dt.15.03.2013, the said Tribunal had directed the applicants in the said SA No.73 of 2013 to deposit ₹20 Lakhs with the respondent-Bank within two weeks, and directed maintenance of *status quo* till the next date of hearing.

Though the said amount was deposited, the *status quo* order was vacated on 10.08.2015.

Subsequently, the Bank issued a fresh demand notice dt.14.01.2016 under Section 13(2) of the Act of 2002 demanding ₹80,23,173.73 ps outstanding as on 14.01.2016 vide Annexure P-4.

The various sale notices

The respondent-Bank issued first sale notice on 06.08.2016 (Annexure P-5) proposing to sell the property for a reserve price of ₹1.30 Crores, but no bidder came forward for the same.

The Bank issued notice dt.10.07.2017 (Annexure P-8) under Section 13(4) of the Act of 2002 read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as ‘the Rules’).

It again attempted to sell the property through a second sale notice dt.10.07.2017 (Annexure P-9) for 16.08.2017, but again no bidders came forward for the same.

Later, it issued a third sale notice dt.25.10.2017 proposing sale of the property on 29.11.2017 but still no bidder came forward and so the property could not be sold.

The District Magistrate, Faridabad passed an order on 08.03.2018 under Section 14 of the Act of 2002 vide Annexure P-11 for taking over the physical possession of the subject secured asset.

Lastly, the fourth sale notice dt.12.03.2018 (Annexure P-13) was issued by the Bank proposing to sell the house property of petitioner No.3 (guarantor) on 28.03.2018 in order to recover ₹10,82,63,404.02 paise from the firm.

This notice was actually dispatched on 13.03.2018 and was delivered to the petitioners on 20.03.2018.

The sale certificate dt.01.05.2018

On 01.05.2018, vide Annexure R-2, Sale Certificate was issued to respondents No.4 and 5 by the respondent-Bank after deposit of the balance bid amount.

Contentions of counsel for the petitioners

Counsel for the petitioners contended that this is in violation of proviso to Rule 9 (1) of the Rules which prescribes that for a subsequent sale, there must be not less than 15 clear days between the date of service of notice of the sale and the date of the sale.

In support of his submissions, he placed reliance on the decision of this Court in the case of **M/s Hoshiarpur Roller Flour Mills Private Limited and Another Vs. Punjab National Bank, Circle Office, Hoshiarpur and others¹**.

Counsel for the petitioners also seeks setting aside of sale certificate dt.01.05.2018 issued by the Bank to respondents No.4 and 5-Auction Purchasers.

The petitioners had also moved an interim application bearing IA No.717 of 2018 in the pending SA No.73 of 2013, which was re-numbered as SA No.705 of 2017, for cancellation of the auction dt.28.03.2018.

Vide order dt. 08.06.2018 (Annexure P-25) the said application was rejected by the Tribunal without even adverting to the contentions of the petitioners that proviso to Rule 9(1) had been violated.

So the petitioners also prayed for setting aside of the said order dt. 08.06.2018 in IA No.717 of 2018 in SA No.705 of 2017 passed by the Tribunal.

Response of the Bank (respondents No.1 to 3)

In the Written Statement filed on behalf of respondents No.1 to 3, they supported the action of the Bank in selling the mortgaged property in the sale held on 28.03.2018.

According to them, the authorized officer of the Bank had issued sale notice dt.12.03.2018 to the petitioners on 13.03.2018, and on the

¹ Passed in CWP No.14440 of 2021 (DB) PHHC

same day, it was also pasted on the mortgaged property i.e. the residential house of the petitioners, and they were fully aware of the said auction.

They have also contended that respondents No. 4 and 5 had quoted ₹1,05,05,000/-, and sale certificate dt.01.05.2010 (Annexure R/2) was also issued after the payment of entire bid amount, and later on, possession of the subject property was also handed over to them.

It is also contended that order dt.08.06.2018 (Annexure P-25) passed by DRT-II, Chandigarh is correct, and that if the petitioners were aggrieved by the same, they should avail the appellate remedy under Section 18 of the Act of 2002.

Response of the Auction Purchasers (respondents No.4 and 5)

Reply affidavit of respondents No. 4 and 5 was filed.

In the said reply, they also supported the sale in their favour contending that the Court should not interfere with the sale which was conducted in accordance with law merely because there is a subsequent higher offer. They blame the petitioners for trying to escape from their liability, and stalling the recovery process till March, 2018.

It is stated that they are the *bona fide* buyers of the secured asset, that they had complied with the terms and conditions of the auction, and the petitioners always wanted to delay the recovery proceedings.

We have noted the contentions of the respective parties.

Rebuttal by the counsel for the petitioners.

It is the contention of the petitioners that the sale notice dt.12.03.2018 was put in Registered Post on 18.03.2018 and reached the petitioners on 20.03.2018.

In Para 11(i) of the interim application of IA No.717 of 2017 filed in SA No. 705 of 2017, the petitioners had specifically raised the plea that the statutory notice under Section Rule 8(6) of the Rules was issued on 12.03.2018, that it was dispatched on 13.03.2018, and delivered to the petitioners on 20.03.2018, and as such the mandatory period of 15 days between the date of service of notice and the date of sale was not there, and so the sale could not be conducted on 28.03.2018 as per proviso to Rule 9 (1) of the Rules.

In its reply filed in the DRT to the said allegation, the Bank denied the same, and contended that the notice was served on the applicants through Registered Post dt.12.03.2018, but the Bank did not produce the tracking record for the notices sent by the Registered Post to these petitioners for the reasons best known to it, and suppressed the same.

It only filed the tracking reports in respect of notices sent to the borrower and borrower's firm which indicated that notices were served on 15.03.2018.

The Tribunal in the order dt.08.06.2018 (Annexure P-25), totally ignored this contentions, and did not even advert to it.

The Debt Recovery Tribunals which are constituted as Forums for adjudication of disputes under the Act of 2002 are expected to deal with the contentions raised by the parties and answer them. Otherwise the whole purpose of having such alternative remedy would fail.

The failure of the said Tribunal vitiates its order, and therefore, it is liable to be set aside.

The Supreme Court in the celebrated decision in the case of **Mathew Varghese Vs. M. Amritha Kumar and others**² observed that a secured creditor may be entitled to enforce the security interest created in its favour without resorting to any Court proceedings or approaching the Tribunal, but *such enforcement should be in conformity with the other provisions of the SARFAESI Act.*

In the said decision, dealing with the requirement of service of the sale notice on the borrower/guarantor under Rule 9 and Rule 8(6) of the Rules, it was held in Para 31 as under:-

“31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Section 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorized officer should serve to the borrower a notice of 30 days for the sale of the immovable Secured Assets. Reading 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. It is also stipulated that no sale should be effected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days individual notice to the borrower and also a public notice by way of publication in the

² 2014 (5) SCC 610

newspapers. In other words, while the publication in newspaper should provide for 30 days clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with proviso to sub-rule (6) of Rule 8, 30 days clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression 'or' in Rule 9(1) should be read as 'and' as that alone would be in consonance with Section 13(8) of the SARFAESI Act." (emphasis supplied)

From the aforesaid, it is clear that for the first sale, 30 days clear notice is mandatory. It follows that for the subsequent sale, in view of the proviso to Rule 9 (1), 15 days clear notice to the borrower before the sale is held, is also mandatory.

The purpose of this time gap is explained in Para No. 33.1 and 33.2 of the said decision. The same is reproduced as under:-

“33.1 *In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/ borrower should have clear notice of 30 days before the date and time when the sale or transfer of the Secured Asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the Secured Creditor before that date and time.*

33.2 *Secondly, when such a Secured Asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any*

possibility of the bidders later on to express ignorance about the factors connected with the asset in question.” (emphasis supplied)

The right conferred on the owners/borrowers to make all efforts to retain his/her ownership cannot be defeated by the secured creditors by giving a go-by to the Rules framed under the Act of 2002.

In the case of **J. Rajiv Subramaniyan & Another Vs. M/s. Pandiyas & Others**³ also, the Supreme Court held that any sale without following Rules 8 and 9(1) of the Rules would be unconstitutional, and would be null and void.

In the decision of **M/s Hoshiarpur Roller Flour Mills Private Limited and Another** (1 Supra), a sale notice dt.27.11.2020 was issued by the Bank proposing to sell the mortgage property to the petitioners on 15.12.2020, but the same was put in Registered Post for service on the petitioners on 12.12.2020, three days prior to the sale, and it reached the petitioners on 15.12.2020, the date of the sale. This Court held that a minimum 15 days gap for a subsequent sale is required to be maintained between the date of service of the notice and the date of the sale and it set aside the sale.

Conclusion:

In view of the above settled legal position, this Writ Petition is Allowed; order dt.08.06.2018 (Annexure P-25) passed by the DRT-II, Chandigarh in IA No.717 of 2018 in SA No.705 of 2017 is set aside; the sale conducted on 28.03.2018 by the respondents No.1 to 3-Bank pursuant to the sale notice dt.12.03.2018 is declared to be illegal, contrary to proviso

³ 2014 (5) SCC 651

to Rule 9 (1) of the Rules, and as null and void; the sale certificate dt.01.05.2018 (Annexure R/2) issued to respondents No.4 and 5 is set aside; respondents No.4 and 5 are directed to restore back possession of the secured asset to the respondents No.1 to 3-Bank within two weeks from the date of receipt of a certified copy of this order; respondents No.1 to 3-Bank shall refund the sum of ₹1,05,05,000/- paid by respondents No.4 and 5 with interest @ 7% per annum from the date of its deposit till it's return; and such refund shall be made by them within a period of two weeks from the date of receipt of certified copy of this order.

Liberty is granted to respondents No.1 to 3-Bank to conduct fresh auction in accordance with law for the recovery of the dues owed to it by the petitioners and their firm M/s S.L.N Industries.

No Costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

May 24, 2022
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>
<i>Whether Reportable</i>	:	<i>Yes</i>