



\$~45

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

%

Reserved on: 07.01.2022

Pronounced on: 24.01.2022

+ **W.P.(C) 357/2022** & CM APPLs.988 - 989/2022

MAHIPAL SINGH YADAV

..... Petitioner

Through: Mr. Amarjeet Singh Rakhra, Adv.

versus

UNION BANK OF INDIA & ANR.

..... Respondents

Through: Mr. Samarendra Kumar, Adv. for
Union Bank of India.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT OF THE COURT

1. The present writ petition has been filed by the petitioner assailing the order dated 13.12.2021 passed by the Debt Recovery Tribunal (DRT), Jaipur, whereby the learned DRT has rejected the Interim Relief Application filed by the petitioner in pending Securitisation Application (S.A.) No. 22 of 2019 renumbered as T.S.A. application 50 of 2021. In addition, the petitioner is also challenging the action of the respondent Bank (*formerly known as Andhra Bank*) taken in consequence of the passing of the impugned order dated 13.12.2021, namely, the execution of Sale Certificate dated 16.12.2021 in favour of respondent No.2.
2. The primary prayers in the writ petition are as under:-



“A. Issue Writ, Order, or Direction in the nature of Certiorari quashing the order dated 13.12.2021 passed by DRT, Jaipur in Transferred Securitization Application No. 50 of 2021; Mahipal Singh Yadav vs. Union Bank of India;

B. Issue Writ, Order, or Direction quashing the Sale Certificate dated 16.12.2021, drawn in favour of O.P. No.2 which is a consequential act of the Respondent Bank, as a result of the passing of the impugned order dated 13.12.2021;

3. Even though in terms of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (*hereinafter referred as the SARFAESI Act*), any person aggrieved by an order of the DRT has a right to prefer an appeal before the Debt Recovery Appellate Tribunal (DRAT) under Section 18 of the Act, 2002, however, the office of DRAT has been lying vacant since 30.10.2021.
4. The Supreme Court in its order dated 16.12.2021 has requested the concerned High Court(s) to entertain the matters falling within the jurisdiction of DRTs and DRATs, as a stop-gap arrangement, with the objective of addressing the grievance of the petitioner who, on account of such vacancy, may not be able to exercise their legal rights. In this view of the matter, the petitioner has preferred the writ petition and the same is being entertained by this Court.
5. The facts and the disputes in the present case lay within a narrow compass.
6. One M/s J.S. Medimax Pvt. Ltd. availed a loan of about Rs. 27.09 Crores from the respondent Bank during 2015-17, and the petitioner stood as a Guarantor for the said loan account by offering his



residential house bearing No. D-2/13, Plot No.23, Khasra No. 16/25, Village Dabri, Vashisth Park, New Delhi – 110046 (*hereinafter referred as the subject property*) as security. On 30.12.2017, the loan account of M/s J.S. Medimax Pvt. Ltd. became NPA, and consequently a notice under Section 13(2) of the SARFAESI Act was issued by the respondent Bank on 02.01.2018.

7. Since the amount demanded by the respondent Bank in its notice under Section 13(2) of the SARFAESI Act was not paid by the Borrower, the respondent Bank on 03.07.2018 issued a notice under Section 13(4) of the SARFAESI Act in respect of the mortgaged property. The respondent Bank issued another notice dated 04.07.2018 under Section 13(2) of the Act, and on 09.09.2018, the petitioner received a notice dated 03.08.2018, informing the petitioner about the sale of the subject property.
8. Since the petitioner felt that the notice was violative of Rule 6(2), 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002, the petitioner filed a Securitisation Application under Section 17 of the SARFAESI Act, 2002 before DRT-I, Delhi being S.A. No. 22 of 2019., The respondent Bank filed its reply.
9. Since the auction, which was proposed to be conducted pursuant to the notice dated 03.08.2018 could not materialise, the property was again put to auction by issuing 15 days' e-auction notice on 19.08.2021, stating that the property would be auctioned on 15.09.2021 at a reserve price of Rs. 2,65,00,000/-.
10. It is the case of the petitioner that the petitioner throughout has been requesting the respondent Bank to accept the amount of Rs. 2.65 crores,



being the reserve price fixed by the Bank, but the Bank has not paid any heed to the request of the petitioner. The auction was conducted on 15.09.2021, and respondent no.2 was declared as the successful bidder having bid the reserve price, 25 % of the bid amount was deposited by the bidder. We may observe that the petitioner has not placed on record any material to show that the petitioner actually had, or tendered the amount of Rs. 2.65 crores to the respondent No.1. This plea of the petitioner is, therefore, neither here nor there.

11. The petitioner proceeded to file I.A. No. 2199 of 2021 before DRT-I, New Delhi in pending S.A. No. 22 of 2019, seeking setting aside of the auction conducted on 15.09.2021, and for issuance of directions to the respondent Bank not to confirm the sale of the subject property in favour of the auction purchaser, i.e. the respondent no.2.
12. As per the petitioner, the petitioner had repeatedly been writing to the respondent Bank for disclosing the name of the auction purchaser as well as the bid amount, and only on 27.10.2021, the respondent Bank informed the petitioner that the bid amount received by it was of Rs. 2,65,00,000/-, and the successful auction bidder is Mrs. Sudesh Rani, wife of Mr. Anil Kumar, respondent No.2 herein.
13. Since the highest bid amount received by the respondent Bank was the reserve price, the auction purchase was confirmed at the reserve price. The petitioner contended that the said auction at the reserve price, and confirmation thereof, are violative of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002.
14. The argument of the auction being violative of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 has not been adverted to



by the DRT in the impugned order. The only ground adverted to by the DRT was with regard to details of the subject property not being completely described in the auction notice. The Tribunal has rejected that objection of the petitioner, and in our view rightly so. The petitioner has also not pressed the said issue before us.

15. The only argument of Mr. Rakhra, learned counsel for the petitioner is that the auction and its confirmation are violative of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002. His sole argument is that the respondent Bank did not obtain the consent of the petitioner for confirming the sale in favour of respondent No.2 at the reserve price for the auction determined by the respondent bank. He submits that the said ground was specifically raised before the DRT, but was not dealt by the DRT.
16. It is the case of the petitioner that as per the second proviso to Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, when the sale is sought to be confirmed at the reserve price, prior consent of the Borrower is a must, and any sale confirmed without the consent of the Borrower is violative of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, and hence is liable to be set aside. learned counsel for the petitioner has placed reliance on the decisions of the Division Bench of Madras High Court in ***K. Raamaselvam and Others vs Indian Overseas Bank and Another***, 2009 SCC OnLine MAD 1230 and ***A. Varalakshmi v. The Chief Manager Punjab National Bank Asset Recovery Management Branch (ARMB) Khivraj Buildings, First Floor 634, Anna Salai Chennai 600006 & Another*** 2012 SCC OnLine Mad 2366.



17. *Per contra* Mr. Samarendra Kumar has submitted that no consent of the Borrower is required, in case the property /secured asset is sought to be sold at the reserve price. The consent of the Borrower is required, only in case the property is sought to be sold below the reserve price. To substantiate his argument, he has relied on three judgments, viz. **Anil Kumar Srivastava v. State of U.P. And Anr.**, 2004 8 SCC 671; **Sri. K. Sunder Babu v. Union of India & Anr.**, 2018 SCC OnLine Kar 835 and **Varghese Ukken v. State Bank of India**, 2010 SCC OnLine Ker 4745.
18. We have heard the learned counsels for the parties and have gone through the record and Judgments cited before us.
19. Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 reads as under:-

9. Time of sale, Issue of sale certificate and delivery of possession, etc.- (1) *No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.*

(2) *The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:*

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 8.

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of



the borrower and the secured creditor effect the sale at such price.”

xxxxx

20. The SARFAESI Act, 2002 was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest. It further provides a central database of security interests created on property rights, and for matters connected therewith or incidental thereto. The Act, generally speaking, allows the financial institutions and banks to sell the mortgaged properties to recover their dues, in case the borrower fails to repay their loans after the loan account(s) is/are declared NPA. The Act was brought to ensure that lenders are able to swiftly take possession and sell secured assets mortgaged to them by the borrowers/ guarantors, in line with global standards.
21. The Security Interest (Enforcement) Rules, 2002 were framed vide notification issued on 20.09.2002 by the Central Government in exercise of powers conferred upon it by Sections 38(1) and 38(2)(b) read with Section 13(4), (10) & (12) of the SARFAESI Act. The Rules provide the procedure which the banks and financial institutions - who are entitled to invoke the provisions of the SARFAESI Act, should adopt in the matter of liquidation of the secured assets. Insofar as they are relevant for our purpose, we make take note of Rules 8 & 9.
22. Rule 8 deals with the aspect of sale of immovable secured assets. The ‘authorised officer’ as defined in the Rules shall take, or cause to be taken, possession, by delivering of the prescribed notice to the borrower and by affixing the possession notice on the outer door or at a conspicuous place of the property. Rule 8(5) is relevant, and the same



reads as follows:

“8. *Sale of immovable secured assets.*

x x x x x x x x x

*(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, **fix the reserve price of the property** and may sell the whole or any part of such immovable secured asset by any of the following methods:—*

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or*
- (b) by inviting tenders from the public;*
- (c) by holding public auction; or*
- (d) by private treaty.*

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): Provided 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 two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

- (a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;*
- (b) the secured debt for recovery of which the property is to be sold;*
- (c) **reserve price, below which the property may not be sold;***
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;*



(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.”
(emphasis supplied)

23. Thus, the authorised officer is obliged to obtain the valuation of the property from an approved valuer, and in consultation of the secured creditor, to fix the reserve price of the property. Thereafter, he may sell all, or any part of any immovable secured assets by any of the prescribed methods. The methods prescribed, *inter alia*, include invitation of tenders from the public, or by public auction.
24. The proviso to Rule 8(6) obliges the secured creditor to cause a public notice in two leading newspapers – one of which is in vernacular language, having sufficient circulation in the locality by setting out the terms of sale which, *inter alia*, include the “**reserve price, below which the property may not be sold**”.
25. From the above, it would be seen that the purpose of fixation of the reserve price of the immovable property is to set a benchmark, i.e. the minimum price at which the property may be sold, and below which price the property may not be sold – which is also clear from the reading of Clause (c) of the proviso to Rule 8(6).
26. We may now turn to Rule 9 of the aforesaid Rules. Rule 9(2) has been



set out hereinabove. It provides that the sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid, or tender, or quotation of offer to the authorised officer, and shall be subject to confirmation by the secured creditor.

27. The first proviso to Rule 9(2) mandates that any sale made under Rule 9 shall not be confirmed, if the amount offered towards sale price is *“less than the reserve price specified under sub-Rule (5) of Rule 8”*. Thus, the embargo is against confirmation of the sale price, which is less than the reserve price. The sequitur is that there is no embargo against confirmation of a sale, where the highest offered price is equal to, or more than the reserve price. Once a reserve price is fixed, the Borrower, as well as the world at large, are aware that it is the bare minimum price at which the mortgaged property could be sold. The reserve price is put in public domain, and the bidders are free to offer their bid at the reserve price, or above.
28. The second proviso is relied upon by the petitioner and the same provides that *“if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price”*.
29. The submission of the petitioner is that the words “such price” used in the second proviso to Rule 9(2) refers to the reserve price, whereas, the submission of the respondent is that the expression “such price” refers to the highest offered price, which is not higher than or equal to the reserve price. That is, it is lower than the reserve price.
30. No doubt, the second proviso to Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 is not very happily worded, but it is for the



Court to find the true meaning of the said Rule, – a meaning which advances the object of the Act and the Rules. At this juncture, we may refer to the observations of Lord Denning in the case of *Seaford Court Estates Ltd. v. Asher [1994] 2 All ER 155* wherein he held: "*When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases*". This principle finds an affirmation in *Varsha Kapoor v. UOI & Ors.* 2010 SCC OnLine Del 2213 decided by a Division Bench of this Court.

31. It does not stand to reason that when, post valuation, the reserve price of the immovable secured asset has been fixed, and the purpose of any tender, or auction is to invite offers with a clear declaration of the reserve price "*below which the property may not be sold*", the confirmation of sale of the property at the reserve price – if no higher bid is received, should still require the consent of the borrower. The whole purpose of undertaking the sale of the immovable property through a public auction/ tender would be defeated, if the authorised officer is obliged to first obtain the consent of the borrower – where the highest bid/ offer received during the public auction/ tender is equal to the reserve price, and not higher. To read the second proviso to Rule



9(2) to mean that even for confirmation of a sale on the reserve price (being the highest received bid price), the consent of the borrower is must, would go against the concept of fixation of a reserve price. As is clear from a reading of Rule 8 aforesaid, reserve price is the price below which the property may not be sold. The second proviso to Rule 9(2) would become relevant and be attracted, only if the case is not covered by the first proviso, namely, where the amount offered towards sale price is equal to, or more than the reserve price specified under sub-Rule (5) of Rule 8. It is only when the offered sale price is lower than the reserve price, that the second proviso comes into play, and in such a situation, without the consent of the borrower and the secured creditor, the authorised officer cannot confirm the sale.

32. The insertion of the second proviso to Rule 9(2) is to provide greater flexibility, so that the endeavour to sell the secured asset is not defeated. There may be a situation where the highest bid received in the tender/ auction process may be even below the reserve price, and the borrower and the secured creditor – with a view to extinguish, or reduce the outstanding liability of the borrower, may still consider it to be financial prudent to accept such a bid, and may give their consent to the confirmation of the sale. To deal with a situation like that, the second proviso has been built into Rule 9(2). The second proviso to Rule 9(2) provides flexibility to the concerned parties, namely, the borrower and the secured creditor, to sell the secured asset, with their consent, at a price which is even below the reserve price. No doubt, the purpose of holding a public auction/ tender to sell an immovable asset is to secure the highest and best price since that would inure to the



benefit of not only the borrower but also the secured creditor. However, the expectations of the borrower and secured creditor may not always be met for myriad reasons, and the offers received during the public auction/ tender may be even below the reserve price. It is to deal with such like situations that the second proviso to Rule 9(2) seeks to lay down a flexible procedure with the object of fructifying the endeavour to sell the immovable asset that the authorised officer undertakes at substantial monetary expense and expense of time.

33. The word “such price” appearing in second proviso to rule 9(2) means the highest bid price, which is lesser than the reserve price. If the property could be sold at the reserve price, only with the consent of the Borrower, the said condition will make first proviso absolutely nugatory and meaningless.
34. With the utmost respect, we find ourselves unable to agree with the decision of the Madras High Court in **K. Raamaselvam** (supra). The Madras High Court in this decision has held as follows:-

“9. A bare reading of Rule 9(2) makes it clear that three contingencies can arise when an auction takes place. Those are, (i) the bidder offers an amount, which is more than the upset price, (ii) the bidder offers an amount, which is less than the reserve price, and (iii) the bidder offers an amount, which is neither less nor more than the upset price. If the amount offered by the highest bidder is more than the upset price fixed under Rule 8(5) the sale shall be confirmed in favour of such higher bidder. This however, is subject to confirmation by the Secured Creditor. If the bid amount is less than the upset price, no sale shall be confirmed as contemplated under the first Proviso to Rule 9(2). The Second Proviso makes it clear that if the Authorised Officer fails to obtain a price higher than the reserve



price, the sale can be confirmed only with the consent of the borrower and the Secured Creditor. It is thus obvious that if the price offered is same as the reserve price, it cannot be said that the Authorised Officer has obtained a price higher than the reserve price. A combined reading of all the provisions contained in Rule 9(2) makes it clear that if the price offered is higher than the reserve price, it shall be confirmed by the Authorised Officer, but such confirmation is subject to the further confirmation by the Secured Creditor. If however, price offered is not higher than the reserve price, which means it may be on par with the reserve price or less than the reserve price, the auction can be confirmed only with the consent of the borrower and the Secured Creditor and not otherwise. Learned counsel for the Bank by relying upon the decision of the Supreme Court, has submitted that in normal circumstances, reserve price is fixed to indicate the minimum price at which property can be sold. We do not think that such a contention can be accepted in view of Second Proviso to Rule 9(2) is to the effect that if the Authorised Officer fails to obtain a price higher than the reserve price it can be confirmed only with the consent of the Secured Creditor as well as the borrower and not bereft of such consent. But the learned counsel for the Bank as well as purchaser had submitted that since the proceeding under Section 17 is pending, the question now raised in the Writ Petition as well raised in the proceedings and in view of such existence of such alternative remedy, the Writ Petition should not be entertained.

12. In the present case, the bid offered was the same as the reserve price and therefore, the Authorised Officer could confirm such sale only with the consent of the borrower and the Secured Creditor. It is crystal clear from the present stand taken by the borrower indicates that there is no consent for confirmation of such sale. As a matter of fact, the Authorised Officer has never bothered to find out from the borrower whether he was willing



that the sale should be confirmed, despite the fact that the Authorised Officer had failed to obtain a price higher than the reserve price.”

35. The interpretation adopted by the Court in **K. Raamaselvam** (supra) renders first proviso to Rule 9(2) nugatory. In fact, the language of the first proviso to Rule 9(2) has been overlooked by the Court. Also, the whole purpose of fixing the reserve price, and the purpose of recovery by selling the secured immovable assets by the secured creditor would be rendered nugatory, if that interpretation is accepted.
36. This judgment does not advert to the clear language employed in Clause (c) of the proviso to Rule 8(6), which requires that the public notice should disclose the “*reserve price, below which the property may not be sold*”. If the intention of the rule makers would have been to require the consent of the Borrower even for confirmation of Sale at the reserve price, the public notice would have required declaration of the “*reserve price, only above which the property may be sold.*” Similarly, the first proviso of Rule 9(2) would have read “*provided – that no sale under this Rule shall be confirmed, unless the amount offered by sale price is more than the reserve price.....*”
37. The judgment in **A. Varalakshmi** (supra) does not deal with issue in controversy. The judgments relied upon by the petitioner are, therefore, of no avail.
38. The Counsel for the respondent Bank sought to place reliance on **Anil Kumar Srivastava** (supra). This judgment deals with question of reserve price. However, it may not be relevant for the purpose of our adjudication. Another judgement in **K. Sunder Babu** (supra) cited by



the respondent Bank has been set aside by the Division Bench on 05.07.2018, and hence need not to be adverted to.

39. We are supported in our view by the judgment *Varghese Ukken* (supra), the relevant extract of which reads as follows:

“29. On analysing the position in above background, it cannot but be held that the Scheme of the Statute, particularly the stipulation under the ‘second proviso’ to Rule 9(2) pointing out the necessity to obtain the consent of the borrower – when the sale does not fetch a price higher than the reserve price enabling the authorized officer to sell the property at “such price” only means “such lesser price”.

40. The said view, according to us, is the correct view. In this view of the matter, we find no merit in the present petition and the same is dismissed.

VIPIN SANGHI, J

JASMEET SINGH, J

JANUARY 24, 2022/ ‘ms’