IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2510/2023

Shri Siddheshwar s/o Pundlikrao Lonsune and another
Vs.
Authorised Officer, Shri Kishor Pralhadrao Randhave, The Washim Urban Co-operative Bank Ltd. Washim and others

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri Vijaykumar Paliwar, Advocate for petitioners
Shri R.K. Thakkar, Advocate with Shri C.A. Joshi, Advocate for respondent No.3

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..
DATED : 08/04/2024

Heard Shri Paliwal, learned Counsel for petitioner. The petition questions the judgment 08/06/2015 by the Debts Recovery Tribunal, Nagpur whereby the auction sale of the mortgaged property has been set aside on the ground of non compliance of the provisions of the Rule 8(5) and 9 of the Security Interest (Enforcement) Rules, 2002, which has been upheld by the Appellate Tribunal by its order dated 30/11/2022.

2. Shri Paliwal, learned Counsel for the Auction purchaser contends, that the due process of law as laid down in this regard, has been followed in as much as, the valuation of the property put to auction was already done earlier in point of time and the same could have been duly taken into consideration by the authorities below.

3. Even if, it is presumed that the above position is correct, still we are unable to set aside the impugned

judgments and orders, for the reason that the auction notice issued in this regard, according to us, rightly does not comply with the requirements of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, for the reason that the auction notice does not indicate, the date of auction, the place of auction and the reserved price. In our considered opinion, all three things are necessary in an auction notice and any failure in that regard, will make the auction notice *non-est* and so also the consequent sale effected thereunder invalid. This has been duly considered by the learned Debts Recovery Tribunal, Nagpur as well as Appellate Tribunal in the impugned judgment and order. Though reliance is placed by Shri Paliwal, learned Counsel for the petitioner, in case of ***UCO Bank and Anr. Vs. Dipak Debbarma and ors., AIR 2016 SC 5502***, all that it says, is that the valuation report was available and, therefore, setting aside of the sale on that ground was not permissible as the reserve price was indicated in the sale proclamation itself. In the instant case, as indicated above, there is no such reserve price mentioned in the sale notice.

4. Shri Paliwal, learned Counsel for petitioner relied on ***S. Karthik and others Vs. N. Subhash Chand Jain and others, (2022) 10 SCC 641***, which is on the proposition as to when the second sale notice can be considered as continuation of the first. No material in that regard has been placed on record regarding the first sale notice, the time gap between the first sale notice and the second sale notice, for us to with any certainty arrive at any conclusion. That apart, as indicated above, the sale notice which in

question is dated 28/09/2009, as indicated above suffers from the patent defect of absence of any time, place of auction or for that matter the reserve price, which at this stage, cannot be said to be curable in nature, considering which, we do not see any reason to interfere in the impugned judgment and order. The present petition is dismissed. No costs.

5. All pending applications also stand disposed of in the above terms.

JUDGE **JUDGE**

R.S. Sahare