



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY SIXTH DAY OF NOVEMBER
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE A V SESA SAI

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO: 17935 OF 2018

Between:

1. Canara Bank, Guntur Main Branch,
Rep by Authorised Officer, Shaik Mowlali
S/o.Abdul Ravouf , aged about 57 years,
Asst. general Manager, Hindu High School campus,
Opp. Gandhi Park, Guntur. 522003

...PETITIONER(S)

AND:

1. The Registrar, Debts Recovery Appellate Tribunal, Kolkatta.
2. Kalangi Ramesh Babu S/o. Pulla Rao Prop. Lakshmi Sai Cottons, Aged .
59 years, Occ. Business, Flat No.G-5, Sai Krupa Towers, 6 th Lane,
Gobidpet Main Road, Guntur, Andhra Pradesh
3. Mannava Harinath Babu, S/o. M.uma MaheswarRao Aged about 40
years, Occ. Business, Navabharat Nagar, 2nd Cross, Fiat No.F.4, Sri
Ganesh Nilayam, Guntur. 522006

...RESPONDENTS

Counsel for the Petitioner(s): S SAINATHAN

Counsel for the Respondents:

The Court made the following: ORDER



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI
AND
THE HONOURABLE SRI JUSTICE M.GANGA RAO
WRIT PETITION Nos. 17935 and 25387 of 2018

COMMON ORDER: *(Per Hon'ble Sri Justice A.V.Sesha Sai)*

Heard Sri K.Hari Narayana, learned counsel for the petitioner in W.P.No.17935 of 2018 and Sri V.V.Ramana, learned counsel for the petitioner in W.P.No.25387 of 2018 and Sri K.B.Ramanna Dora, learned counsel for the second respondent in W.P.No.17935 of 2018 and first respondent in W.P.No.25387 of 2018.

2. In both these Writ Petitions, challenge is to the order passed by the Debts Recovery Appellate Tribunal, Kolkata in Appeal No.175 of 2017, dated 19.04.2018 whereby and whereunder the Appellate Tribunal had set aside the orders of the Debts Recovery Tribunal, Visakhapatnam passed in S.A.No.253 of 2017, dated 04.08.2017.

3. The Canara Bank, Guntur Branch advanced loan in favour of M/s.Lakshmi Sai Cottons, a proprietary concern, represented by its proprietor Mr.K.Ramesh Babu, who is the second respondent in W.P.17935 of 2018 and first respondent in W.P.No.25387 of 2018. Since the loan account became a Non Performing Asset, Canara Bank pressed into service the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). Initially, an auction notice was issued under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 on 26.04.2017, but, in view of the lack of bidders, the said auction did not materialize. Thereafter, the Bank issued another



auction notice, dated 04.07.2017, proposing to hold auction on 21.07.2017. Subsequently, in terms of the said auction notice, the auction was held and the petitioner, in W.P.No.25387 of 2018, emerged as the successful bidder.

4. Assailing the measures initiated by the Bank under the provisions of the SARFAESI Act, Mr.Ramesh Babu, principal borrower approached the Debts Recovery Tribunal, Visakhapatnam by filing S.A.No.253 of 2017 under Section 17 of the SARFAESI Act. The Tribunal, by way of an Order, dated 04.08.2017, dismissed the said S.A.No.253 of 2017. Aggrieved by the said order passed by the primary Tribunal, the said Mr. K.Ramesh Babu approached the Debts Recovery Appellate Tribunal, Kolkata by way of filing the Appeal No.175 of 2017. The Appellate Tribunal, by way of an order, dated 19.04.2018, allowed the said appeal and set aside the orders of the primary Tribunal and also the sale held on 21.07.2017. In the above background, assailing the said order, these Writ Petitions came to be filed by the Bank and the Auction Purchaser.

5. According to the learned counsel for the petitioner, the impugned order setting aside the well considered order passed by the primary Tribunal, is highly erroneous, contrary to law and not in consonance with the material available on record. In elaboration, it is further contended that strictly adhering to the mandatory requirements of the SARFAESI Act and the Rules, the auction was conducted wherein one Sri Mannava Harinadh Babu, emerged as the highest bidder. It is also their submission that since the Bank authorities made an attempt to serve the notice under Rule 9(1) of the Security Interest



(Enforcement) Rules, 2002 on 06.07.2017, it has to be necessarily construed, that there is total compliance of the mandatory requirements of Rule 9(1) of the Security Interest (Enforcement) Rules, 2002. It is also their submission that since the borrower did not comply with the mandatory requirements of Section 18 of the SARFAESI Act by depositing the amount as enumerated in the said Provision of law, the Appellate Tribunal ought to have allowed the appeal. In support of his submissions and contentions, Sri K.Harinarayana, learned counsel places reliance on the judgment of the Honourable Supreme Court in ***D.Vinod Sivappa vs. Nanda Belliappa***¹.

6. On the contrary it is contended by Sri K.B.Ramanna Dora, learned counsel for the borrower, Mr.K.Ramesh Babu, that the mode adopted by the Bank authorities while conducting the auction is highly objectionable and cannot be sustained. It is also his submission that since the Bank authorities did not adhere to the mandatory requirements of Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, the Appellate Tribunal is perfectly justified in setting aside the sale. It is also his submission that the Bank authorities valued the property, fixing the reserve price at Rs.1,38,25,000/-, when the fact remains that the value of the property was shown as Rs.267.30 lakhs in the sanctioned letter, dated 09.05.2015. It is also his submission that since the Bank authorities sold the said property for a throw away price, in utter disregard to the provisions of the SARFAESI Act and the Rules, the order passed by the Debts Recovery Appellate Tribunal, by

¹ CrI.P.No.1255-1261 of 2004, dated 25.05.2006



any stretch of imagination, cannot be faulted. In support of his submissions and contentions, he places reliance on the judgment of the Honourable Apex Court in the case of **Mathew Varghese vs. M.Amritha Kumar & Ors²**.

7. In the above background, now, the issue which this Court is called upon to answer in the present Writ Petitions is:

"Whether the order passed by the Debts Recovery Appellate Tribunal, which is impugned in the present Writ Petitions, is sustainable and tenable, and whether the same warrants any interference of this Court under Article 226 of the Constitution of India."

8. There is absolutely no controversy with regard to the fact that since the first auction did not materialize, the Bank authorities issued the second auction notice on 21.07.2017. The contention with regard to alleged non-adherence to Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 was never taken by the borrower either before the Debts Recovery Tribunal or in the grounds of appeal before the Appellate Tribunal. Rule 9 of the Security Interest (Enforcement) Rules, 2002 deals with the time of sale, issue of certificate of sale and delivery of possession etc. Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 reads as under:

"[(1) No sale of immovable property under these rules, in first instance 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) of rule 8 or notice of sale has been served to the borrower.

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.]"

² 2014 (5) SCC 610



A reading of the above said provision of law makes it abundantly clear that in the event of failure of the first auction, 15 days' gap needs to be maintained from the date of service of notice till the date of sale.

9. According to the learned counsel for the Bank, the consignment was booked on 05.07.2017 and the same was attempted to be delivered on 06.07.2017 and since the door was found locked on 06.07.2017 the same could be delivered only on 13.07.2017. The cover said to have been sent to the petitioner herein (borrower), shows that on 06.07.2017 the door was found locked and second intimation was sent on 07.07.2017. It is very peculiar to note that contrary to the above two endorsements, another endorsement shows that to the addressee "intimation was made".

10. According to learned counsel for the borrower, Sri K.B.Ramanna Dora, the address available on the said cover does not match with the address given in the S.A.No.253 of 2017. He draws attention of this Court to the acknowledgment of the cover sent to the address given in the S.A.No.253 of 2017 which demonstrates that the item was delivered on 10.07.2017. In this context, it may be appropriate to refer to the judgment rendered by the Honourable Apex Court in the case of **Mathew Varghese vs. M.Amritha Kumar & Ors.** In the said judgment, the Honourable Apex Court, while dealing with provisions of the SARFAESI Act, in general, and Rule 9 of the Security Interest (Enforcement) Rules, 2002, in particular, at paragraph 31 held 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 affected 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 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 the 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."

Having regard to the principle laid down in the above referred judgment, it has to be necessarily construed that 10.07.2017 was the date of service of notice under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 on the borrower. If that being so, this Court is of the opinion that the Bank authorities failed to adhere to the mandatory requirements of Rule 9 of the Security Interest (Enforcement) Rules, 2002, i.e., 15 days' gap between the date of service of notice and the date of auction.

11. Admittedly, reserve price of the property was fixed at Rs.1,38,25,000/- and the auction purchaser purchased the same for Rs.1,54,25,000/- though the sanction letter indicates the value fixed in the year 2015 as Rs.267.30 lakhs.



12. Though it is the submission of the learned counsel for the auction purchaser that the borrower did not plead in the securitization Application or before the Appellate Tribunal in specific terms with regard to the alleged non-adherence to Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, it is to be noted that in the grounds mentioned in S.A.No. 253 of 2017, the borrower alleged that the Bank authorities have not followed the mandatory provisions under the SARFAESI Act while issuing the notice. It can also be noted from a perusal of the order passed by the primary Tribunal that on behalf of the borrower, it was argued that the Bank authorities while issuing notices did not adhere to Rules 8(2) (3) and (4) (6) and 9(1) of the Security Interest (Enforcement) Rules, 2002. This aspect of non-adherence to proviso to Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, was specifically urged. Obviously, the Appellate Tribunal after taking into consideration the failure on the part of the Bank authorities in adhering the mandatory requirements of Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, had set aside the orders passed by the primary Tribunal. Since the ground on which the Appellate Tribunal had set aside the sale is purely a legal ground, even assuming that the same was not specifically pleaded by the borrower, the order of the Appellate authority cannot be faulted. Since, it is a settled principle of law that a question of law can be raised even in collateral proceedings, having regard to the specific provisions under the Security Interest (Enforcement) Rules, 2002 and having regard to the law laid down by the Honourable Apex Court in the case **Mathew Varghese vs. M.Amritha Kumar & Ors.**, the order passed by the Appellate Tribunal, by any stretch of imagination,



cannot be faulted and the judgment on which learned counsel for the Bank places reliance would not render any assistance to him. It is a well established principle of law that unless the order impugned/action suffers from jurisdictional error or patent perversity and passed/taken in violation of principles of natural justice, a Writ in the nature of Writ of Certiorari cannot be issued under Article 226 of the Constitution of India. In the instant case, the said contingencies are conspicuously absent.

13. For the aforesaid reasons, both the Writ Petitions are dismissed. No order as to costs.

It is needless to observe, in view of this order, the payment made by the auction purchaser was also be refunded.

Miscellaneous Petitions pending, if any, in the Writ Petitions shall stand closed.

JUSTICE A.V.SESHA SAI

JUSTICE M.GANGA RAO

Dated 26.11.2019.
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Note: L.R. Copy to be marked.



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**THE HONOURABLE SRI JUSTICE A.V.SESHA SAI
AND
THE HONOURABLE SRI JUSTICE M.GANGA RAO**

WRIT PETITION Nos.25387 and 17935 of 2018

Dated 26.11.2019

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Note: L.R. Copy to be marked.