



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

THE HONOURABLE SRI JUSTICE V SRINIVAS

WRIT PETITION NO: 18659 OF 2019

Between:

1. Syed Hidayathulla , s/o. Syed Slu Bude,
Aged 48 years, occ. Business,
R/o. H.No.9-413/5, Jakeker Hussain street,
Krishnamahal Center, Chilakalluripet,
Guntur district, Andhra Pradesh (522616)

...PETITIONER(S)

AND:

1. THE AUTHORIZED OFFICER Canara Bank,
Guntur Chandramouli Nagar branch, Mayuri Homes, Chandramouli
Nagar, Guntur.

...RESPONDENTS

Counsel for the Petitioner(s): MANIKYA VEENA MEKAPOTULA

Counsel for the Respondents: HARINARAYANA K

The Court made the following: ORDER

*** HIGH COURT OF ANDHRA PRADESH: AMARAVATI****HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU****AND****HON'BLE MR.JUSTICE V.SRINIVAS****+ W.P. No.18659 of 2019**

% 23.06.2023

Syed Hidayathulla,
S/o Syed Slu Bude,
R/o H.No.9-413/5, Jakeker Hussain Street,
Krishnamahal Center, Chilakaluripet,
Guntur District, A.P.

... Petitioner

Vs.

\$ The Authorized Officer,
Canara Bank,
Mayuri Homes, Chandramouli Nagar,
Guntur.

... Respondents

! Counsel for the petitioner: Sri K.V.Simhadri, learned senior counsel for
Smt. Manikya Veena.M

! Counsel for the Respondents : Sri Hari Narayana, Standing counsels for
the respondents.

< Gist:

> Head Note:

? Cases referred:

¹2018 (3) ALD 266² MANU/TL/0049/2020³ MANU/SC/1494/2017⁴ Appeal (civil) No.4123 of 1999⁵ AIR 2012 SC 2288



HOB'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

HON'BLE SRI JUSTICE V.SRINIVAS

W.P.No.18659 of 2019

ORDER: *(per Hon'ble D.V.S.S.Somayajulu)*

This writ Petition is filed for the following relief:

'to issue an appropriate order, writ or direction more particularly one in the nature of writ of Mandamus declaring the inaction on the part of the respondent Bank in not considering the representation submitted by the petitioner dated 11.10.2019 through e-mail for refund of part sale consideration amount paid by the petitioner pursuant to the auction held by the respondent Bank on 26.08.2019 for sale of vacant site admeasuring 302.50 square yards situated at D.No.21/B and 21/B2, near D.No.45-32/16, Near Little Flower School and Chennakesava Towers, Ring Road, 1st Line, Vidya Nagar, Guntur in respect of Loan A/c No.2492261010159 of M/s. Perumallu Agro Industries as illegal, arbitrary and contrary to law and consequently direct the respondent Bank to refund the part sale consideration amount paid by the petitioner pursuant to the auction held by the respondent Bank on 26.08.2019 for sale of vacant site admeasuring 302.50 square yards situated at D.No.21/B and 21/B2 near D.No.45-32/16 Near Little Flower School and Chennakesava Towers, Ring Road, 1st Line, Vidya Nagar, Guntur in respect of Loan A/c No.2492261010159 of M/s. Perumallu Agro Industries in the interest of justice...'



2. This Court has heard Sri K.V.Simhadri, learned senior counsel for Smt. Manikya Veena and Sri Hari Narayana, learned standing counsel for the respondent-Bank.

3. As per Sri K.V.Simhadri, learned senior counsel, pursuant to a sale notice dated 07.08.2019; the writ petitioner participated in an auction conducted by the respondent-Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act (for short SARFAESI Act'). His bid was accepted on 26.08.2019. Thereafter, in terms of the bid etc., 25% of the amount was paid by the writ petitioner amounting to Rs.22.50 lakhs. Since he could not mobilize the rest of the funds due to his health reasons as he was constantly suffering from dengue fever, he sought extension of time. The time for deposit of amount was extended twice from 10.09.2019 to 25.10.2019. The petitioner's ill-health continued. He also submitted a request for furnishing the link documents which were not furnished by the Bank. It is also urged by the learned senior counsel that as per advertisement published, the site measures 302.50 sq. yards, but in reality, it is only 240 sq. yards and the rest is a pathway. It is stated that the site is a 'L' shaped site and these details were not furnished by the respondent-Bank. Learned counsel by relying upon Rule 8(5) and 8(6) and the proviso therein of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') states that the respondent-Bank



had a duty to publish the advertisement clearly and categorically so that the intending buyer would know the site conditions and bid accordingly. He submits that the reason for the delay in deposit is genuine and that as the requisite details of the site were not furnished in the advertisement, the bid submitted by the writ petitioner is not realistic. In addition, he submits that the Bank entered into a One Time Settlement with the original borrower and that they also closed the loan account. Therefore, they did not sustain any loss in the matter as they willingly closed the account. It is submitted that the Rules and in particular, Rule 8(6) of the Rules is flouted along with Rule 9(4) and 9(5) of the Rules. It is argued that the Bank committed a gross error in adjusting the amount deposited even before the last date of payment.

4. Relying upon two judgments reported in ***Mandava Krishna Chaitanya v. UCO Bank, Asset Management Branch***¹ and ***Adhya Industries and others v. Vijaya Bank and others***², learned senior counsel argues that the writ must be decided in his favour as the Rule is now caveat venditor and not caveat emptor.

5. In reply to this, Sri Hari Narayana, learned standing counsel argues the matter. He submits that that petitioner had an option to visit the site and he in fact visited the site and the Bank and examined

¹2018 (3) ALD 266

² MANU/TL/0049/2020



all the papers relating to the property. It is also stated that the terms of the bid were clearly accepted by the writ petitioner and the bid application is also duly filled up by him. He pointed out that both as per Rules and the Act and as per the declaration signed by the bidder, if the transaction is not completed within the time limit, the EMD and other money paid can be forfeited. He relies upon two judgments reported in ***Agarwal Tracom Pvt. Ltd., v. Punjab National Bank and others***³ and ***National Highway Authority India v. Ganga Enterprises and another***⁴ in support of his contention that the forfeiture of the bid is correct.

6. COURT: The procedure of sale of immovable property is spelt out in Rules 8 and 9 of the Rules framed under the SARFAESI Act. Rule 9 talks of the deposit to be made. As per Rule 9(3) of the Rules, the purchaser has to pay 25% of the sale price immediately in addition to the EMD that is already deposited. The balance amount shall be paid on or before 15th day of confirmation of sale or such extended period. The time for payment of balance consideration cannot go beyond three (3) months as per Rule 9(4) of the Rules. Rule 9(5) states that in default of the payment within the period in sub-rule (4) of the Rules, the deposit shall be forfeited to the secured creditor and the property shall be re-sold.

³ MANU/SC/1494/2017

⁴ Appeal (civil) No.4123 of 1999



7. In the case on hand, the last date for deposit was extended up to 25.10.2019. The petitioner had time till this date to pay the quoted/accepted amount. The terms and conditions of the sale also state that if the successful bidder fails to pay the sale price, the deposit shall be forfeited.

8. Therefore, in the opinion of this Court, the right to forfeit the deposit or the advance paid would only arise on the last date i.e. 25.10.2019. The payment can be made 'within' this period {(Rule 9(4) read with Rule 9(5)}. If by this date, the amount is not paid, forfeiture is permissible. Thereafter, the Bank can take further action.

9. In the case on hand, it is noticed that the sum of Rs.22,50,000/- was adjusted on 09.09.2019 itself and that too to the loan account of the borrower. The Rule clearly says that deposit should be forfeited to the 'secured creditor'. As on 09.09.2019, in the opinion of this Court, the Bank had no right or authority to deal with the money. It still retained its character as advance/deposit paid for by the successful bidder and was not available for adjustment. This action of the Bank in adjusting the money by 09.09.2019 is a clear error and the action is contrary to the terms of the sale and also the Rules. It is only after the forfeiture, the Bank will have a right to deal with the money. Till then, it remains the money of the writ petitioner which was paid as advance. It is also apparent that further payment of Rs.15 lakhs was



made on 25.10.2019 which is the last date of payment. Therefore, it is clear that till 25.10.2019, the writ petitioner was making an effort to pay the amount due and therefore, the Bank did not have a right to adjust the money on 09.09.2019 itself.

10. The second issue that arises in this case is about the 'L' shaped property and its location behind a big building. The writ petitioner has filed photographs to show that there is a narrow pathway in between two buildings and thereafter the property is accessible. That the property is 'L' shaped is also admitted in the counter dated 06.12.2022 filed by the Bank. The point that is urged is that as per Rule 8(6) of the Rules, the secured creditor should publish a notice describing the property along with details of encumbrances and other details. The proviso (a) Rule 6 and proviso (f) of Rule 6 of the Rules state that the publication must mention the details which the Authorized Officer considers it material for a purchaser to know in order to judge the nature and value of the property. It is argued by the learned senior counsel that the existence of the 'L' shape is not disclosed in the publication, which merely describes the property as a site measuring 302.50 sq yards. It is pointed out that there is a very narrow pathway between two huge buildings leading to the main road and a large part of the 302.50 sq.yards is a pathway which can only be used as such.



11. According to the learned senior counsel, since a substantial part of the property is in the pathway, the property therefore does not have proper market value. He contends that this is a factor which should have been mentioned in the auction notice itself. Relying upon a Division Bench judgment of the combined High Court reported in **Mandava Krishna Chaitanya** (1 supra), he points out that in that case that the property was sold on 'as is where is' basis also. The Division Bench cancelled the sale and directed the refund. Relying upon para 21, it is argued that it is the Rule of *caveat venditor*, which is applicable now and not *caveat emptor*. The Division Bench noticed that the property falls within the full tank level of lake and this was not disclosed. Relying upon this, it is argued that the Court can set aside the sale even if it is 'as is where is' basis etc. Relying upon the second judgment reported in **Adhya Industries's** case (2 supra), it is argued that if the description of the property is not very clear, the sale can be set aside.

12. The respondent-Bank's argument is that the petitioner is fully aware of the site conditions and that all these issues are raised after the time was extended for payment and he failed to pay the payment. It is contended that the writ petitioner should have and had in fact inspected the property. Therefore, it is stated that he is not entitled to any relief.



13. In the opinion of this Court and as noticed by the various Courts of the land, market value of the property varies depending on its location, size, inherent features etc. An 'L' shaped property in which the bulk of the property is accessed by a pathway or narrow road will not fetch the same price that a property with wide road frontage will get. The Rule in question is in the nature of a proviso and therefore, it carves out an exception to the manner of publication in Rule 9(6) of the Rules. A factor which the Authorized Officer considers material for a purchaser in order to assess the nature and value of a property should necessarily be included in the public notice. Earlier cited case law on the subject deal with encumbrances of the property, which was not disclosed etc. In a case of this nature, when the property is admittedly 'L' shaped and the bulk of the property is behind and in between buildings with a narrow passage way leading to it, this would be a factor which should have been published in the publication as it would caution the intending buyers. This is also contemplated by Rule 6 proviso (f) of the Rules.

14. In the Division Bench judgment that is cited, the Bench found that since the property falls within the full tank level of a lake, it is not in the strict sense 'saleable'. In that case, an argument was advanced by the Bank that the property was sold on 'as is where is' basis and that the careful buyer should look into all the issues before bidding for the same. This Court noticed that after the amounts were deposited



in that case, the buyer realized that there were defects. Still the Division Bench upheld its contentions and directed the Bank to refund the amount.

15. In this case also, this Court holds that even if the bidder participated in the auction, if he discovers certain factors later or raises issues which would have a bearing on the marketability and value of the property, he can raise the same. This Court has to agree with the counsels arguments that this is a factor which should have been published in the advertisement. Nevertheless after a review of the facts, this Court holds that the petitioners conduct estops him in this case as this was a patent visible defect. His conduct in paying the amounts despite being aware of the 'L' shape prevents him from getting a relief on this particular ground.

16. However, this Court also notices the submission about the One Time Settlement. The Bank had entered into a One Time Settlement with the primary borrower and settled the case. The details of the same are not fully furnished despite petitioner's requests. The alleged postponement of auction urged by the respondents is not borne out by any record. Since he made an offer under the One Time Settlement, the Bank had decided to close the issue. The title deed of the property is also returned to the original borrower. A sum of Rs.15 lakhs which was paid by the present writ petitioner was not adjusted



and it is still lying separately as per the counter affidavit filed. The Bank argued that this issue of One Time Settlement has nothing to do with the petitioner's claim for refund. This Court has to therefore decide it. Since the Bank does not have any further claim and has voluntarily given up its claim against the original borrower by its One Time Settlement proposal, which is an accord and satisfaction, the Bank cannot lay any claim on the amount of Rs. 15 lakhs lying in the Bank's custody. This is to be refunded to the writ petitioner. For their own reasons the Bank has accepted a lesser sum of money; compromised the matter and returned the title deeds to the borrower.

17. As far as the original Rs.22.50 lakhs is concerned, here also, the Bank acted in a high handed manner. The right to forfeit the amount would only arise if the failure is clear. Before 25.10.2019 the right to forfeit will not arise, since as per the Rule in question, the amount had to be forfeited if the deposit is not made 'within the period' and the end date for payment is on 25.10.2019. Hence, till that date, it is the amount belonging to the writ petitioner and it cannot be adjusted towards the loan account of the 'defaulting borrower'. Even after 25.10.2019, it could be adjusted to the secured creditor only amended Rule 9 (5) of the Rules). This Rule 9 (5) has been specifically amended by GSR 1046 (E) on 03.11.2016 and the words 'secured creditor' were included in the Rules. They cannot credit it to the borrowers account. This action of the Bank is questionable and high



handed besides being contrary to Rule 9 (5) of the Rules. As a nationalized Bank, their actions must be fair and transparent. This is also to be refunded since the Bank did not have any right over the amount on that date. The final accord and satisfaction in the form of One Time Settlement also goes against them. They have not pleaded and proved that due to a 'loss sustained', they could forfeit the amount. Their conduct in accepting a lesser amount as One Time Settlement estops them from claiming the amounts deposited by the writ petitioner.

18. It transpires that the defaulting borrower has benefited twice (a) by the part bid amount (Rs.22.50 lakhs) being credited to his loan account and (b) by the reduction in the liability due to the One Time Settlement proposal being accepted while the writ petitioner is penalized by adjustment etc.

19. In a decision reported in ***Ram Kishun v. State of U.P.***⁵, the Hon'ble Supreme Court in para 13 clearly held that while auctioning such property in such circumstances, the financial institution should not behave like property dealers; should act in a fair manner and in strict conformity with the statutory provision. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions

⁵ AIR 2012 SC 2288



which are concerned only with the recovery of their loans, may be permitted to behave as they please and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner or in flagrant violation of the statutory provisions. In this case, in conclusion, it is held that the petitioner is entitled to relief for the reasons mentioned in paras 6 to 9 and in paras 16-17.

20. For all the reasons mentioned above, the writ petition is allowed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

D.V.S.S. SOMAYAJULU,J

V.SRINIVAS,J

Date: 23.06.2023

Note: L.R.Copy be marked.

KLP