

DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA: DRAT KOLKATA

The Authorised Officer, Canara Bank Madhunagar Branch, Vijayawada,
Andhra Pradesh

...Appellant

Gottipati Suneetha

...Respondent

Case No: Appl Dy. No. 225 of 2019

Date of Judgement: 20.04.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Ms. Aparajita Rao, Advocates.

For Respondent: Mr. P. Sreenivas with Ms. Swarnali Dutta, Advocates.

Facts:

The appeal arose against the DRT Visakhapatnam order setting aside a bank auction sale of mortgaged property due to alleged procedural violations. The DRT had held there was violation of notice requirements under Security Interest Rules 8(6) and 9(1). However, the Appellate Tribunal relied on recent judgements clarifying there need not be a 30 day gap between 8(6) and 9(1) notices. The appeal court held the property was not undervalued, rejecting the borrower's contention on that aspect. In conclusion, the appeal court set aside the DRT order, upheld the bank's auction sale, and dismissed the borrower's Securitisation Act appeal.

In summary, it provides insights into the operation of the Securitisation Act, interpretative issues on notice

requirements, and parameters for evaluating procedural compliance and asset valuation – which would be useful for banks and borrowers. The discussion on recent case laws is also informative.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1. Instant appeal has arisen against the judgement and order dated 07.08.2019 passed by learned DRT, Visakhapatnam in S.A. 19 of 2018 [Gottipati Suneetha Vs. The Authorised Officer, Canara Bank & two others]. Feeling aggrieved the appellant bank has preferred the appeal.

2. As per pleadings of the parties, appellant bank was approached by the respondent no.1 Smt. Gottipati Suneetha (borrower) for sanction of KCC loan of Rs.28.00 lakh for doing business, which was sanctioned by the appellant bank. Immovable properties belonging to the borrower were mortgaged as collateral security and necessary documents for mortgage were executed. Due to default of the borrower in making repayment loan amount was classified Non-performing Asset (NPA) on 17.04.2017. A notice u/s 13(2) of the SRAFAESI Act, 2002 (hereinafter referred to as 'Act of 2002') was issued on 29.04.2017 which was acknowledged by the borrower on 04.05.2017. Provisions of Section 13(4) of the Act of 2002 were invoked on 02.12.2017 which was acknowledged by respondent no.1. Said Notice was affixed on a conspicuous part of the scheduled property and also published in two newspapers. Notice under Rule 8(6) of the Security Interest (Enforcement) Rules of 2002 (hereinafter referred to as 'the Rules of 2002') dated 29.12.2017 was issued which was acknowledged by the borrower on 04.01.2018. Sale notice for E-auction was issued on 04.01.2018 which was published in one English newspaper and other on

Tamil newspaper on 05.01.2018 fixing the sale date on 06.02.2018. Challenging the action of the bank S.A. was filed by the borrower.

3. Pending S.A., I.A. 88 of 2018 was filed by the borrower praying for stay of the e-auction sale notice dated 04.01.2018 including the e-auction fixed on 06.02.2018. Learned DRT after hearing the parties passed a conditional order on 31.01.2018 declining stay of operation of the e-auction with the condition that if the borrower deposit in two instalments 30% of the sale notice amount, 15% for each instalment, confirmation of sale be deferred till further order and if the borrower failed to deposit the amount the deferment of confirmation of sale shall stand vacated. Due to non-compliance of the order by the borrower e-auction was held on 06.02.2018 and respondent no. 2 and 3 namely, Boompalli Vamsee and Boompalli Siva were declared as highest bidder. Sale amount was deposited in accordance with law and sale deed was registered. Learned DRT after hearing the learned counsel for the parties decided the S.A. setting aside the e-auction sale conducted on 06.02.2018 for violation of Rule 8(6) and 9(1) of the Rules of 2002. Issuance of sale certificate was also set aside. Accordingly, feeling aggrieved by the impugned judgement and order appellant bank has preferred the appeal.

4. Heard learned counsel for the parties and perused the records.

5. Bare perusal of the impugned judgement and order will show that the learned DRT held that there is violation of Rule 8(6) and 9(1) of the Rules of 2002. Accordingly, sale notice dated 04.01.2018 and the auction sale held on 06.02.2018 was set aside including the sale certificate. Learned DRT has placed reliance upon the judgement of the Division Bench of Hon'ble High Court at Hyderabad for the State of Telengana and the State of Andhra Pradesh in WP No. 8155 of 2018 in Sri Sai Annadhatha Polymers & Anr. Vs. Canara Bank, Madanapalle. It is further held that notice under Rule 8(6) of the Rules of 2002 was issued on 29.12.2017 and publication under Rule 9(1) of the Rules of 2002 made in the two newspapers was made on 05.01.2018, there is no clear 30 days gap between the two.

6. A plea was taken by the borrower that amount of Rs.10.00 lakh was

tendered by him to the Branch Manager as advance. This plea was repelled by learned DRT. Further it was held that borrower committed default in repayment and loan was rightly classified as NPA. There was no illegality in issuing notices u/s 13(2) and 13(4) of the Act of 2002. This finding has not been challenged by the borrower, hence, attained finality.

7. Learned counsel for the appellant bank submitted that notices under Rule 8(6) and 9(1) of the Rules of 2002 were issued in accordance with law, as such, there is no illegality. Learned DRT has placed reliance upon the judgement of Sri Sai Annadhatha Polymers case (supra) which has been held as not a good law in subsequent judgement in the case of Adhya Industries & Ors Vs. Vijaya Bank & Ors. reported in Manu/TL/0049/2020. Further learned counsel has placed reliance upon the case of Indian Overseas Bank Vs. M/s. R.A. Pure Life Science Ltd. reported in 2023 SCC OnLine TS 634; Bachhaj Nahar Vs. Nilima Mandal & Anr. reported in (2008) 17 SCC 491 and Canara Bank Vs. M. Amarender Reddy & Anr. reported in (2017) 4 SCC 735.

8. Learned counsel for the appellant further submits that there was no violation of Rule 8(6) and 9(1) of the Rules of 2002. Further the ground taken regarding under-valuation of secured asset is not a valid ground. Reliance was placed on the judgement of Hon'ble Supreme Court in Bachhaj Nahar case (supra) wherein it was held that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case.

9. It was further held in Para 12 of the aforesaid judgement as under :

"The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that

are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

10. In the present case there is no specific violation of Rule 8(6) and 9(1) of the Rules of 2002. However, there is a general ground that the notices are illegal and void under the law. Although there is no specific plea as has been held by the Hon’ble Supreme Court, S.A. applicant has raised these legal pleas, hence, arguments were made.

11. As far as violation of Rule 8(6) and 9(1) of the Rules of 2002 are concerned it is admitted position that notice under Rule 8(6) was issued on 29.12.2017 and it was served upon the borrower on 04.01.2018. Notice under Rule 9(1) of the Rules of 2002 was published on 05.01.2018 and auction sale date was fixed on 06.02.2018. As far as issue of validity and violation of Rules are concerned learned DRT has placed reliance upon the judgement of Sri Sai Annadhatha Polymers (supra) which was held to be not a good law in subsequent judgement of Adhya Industries case (supra). Subsequent thereto in a recent judgement in M/s. R.A. Pure Life Science Ltd case (supra) decided on 10.02.2023 Hon’ble Telangana High Court held that it is sufficient that 30 days notice is issued before sale of secured asset is conducted and notices under Rule 8(6) and Rule 9(1) can be issued simultaneously. In other words, it is not necessary that there must be a 30 days gap after notice under Rule 8(6) is issued and before notice under Rule 9(1) is issued.

12. In another recent judgement of Hon’ble High Court at Telangana in Hyderabad decided on 02.03.2023 in Vinayak Steels Ltd. Vs. Om Vishnu Pipes Pvt. Ltd. reported in 2023 SCC OnLine TS 665, Hon’ble High Court has held in Para 29 as under :

“From the reading of these provisions, it is apparent that by amendment to Rule 9(1) the requirement to maintain 30 days gap between

notice under Rule 8(6) and Rule 9(1) is dispensed with and for second and subsequent notices of sale under Rule 9(1), it is sufficient if 15 days time is maintained from the date of issuing notice under Rule 9(1) and the date of auction. In the cases on hand, the first notice maintained 30 days gap and the second and third notices maintained 15 days gap. The second and third notices were issued after rule 9(1) was amended.”

13. Further reliance was placed in the case of Adhya Industries (supra) wherein it was held that the statute nowhere requires that there should be a 30 days gap between service of notice by the authorised officer on the borrower and the date fixed for sale of the immovable secured assets.

14. Reliance was also placed upon judgement of Hon’ble Telengana High Court in case of Concern Readymix Vs. The Authorised Officer, Corporation Bank, reported in 2018 SCC Hyd 783 wherein Hon’ble High Court in Para 13 to 18 and Para 21 to 23 was held as under :

“13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar, have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in

Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned.

15. Keeping the above distinction in mind, if we come back to the contention with regard to the notice period of 30 days between the publication under Rule 8(6) and the sale under Rule 9(1), it may be seen that the Rules do not contemplate two different notices, one under Rule 8(6) and another under Rule 9(1). We have already extracted both the Rules. Rule 8(6) mandates – (i) the service of a notice of sale on the borrower, (ii) publication of a public notice in two leading Newspapers, of which one should be in vernacular language and (iii) affixture of the notice of sale on a conspicuous part of the immovable property. This is in addition to the option available to the Authorised Officer under Rule 8(7) to put the notice on the website of the secured creditor.

16. All that Rule 9(1) says is that no sale of immovable property in the first instance shall 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.

17. Rule 9(1) does not stipulate a separate notice to be published. This Rule merely makes a reference to the notice of sale served on the borrower. The words "notice of sale has been served to the borrower" appearing towards the end of the main part of sub-rule (1) of Rule 9, cannot be construed as one more notice of sale, apart from the notice of sale to be served on the borrower under Rule 8(6). If this is so construed, then the borrower should have 60 days time, with the first 30 days following the notice of sale under Rule 8(6) and the second period of 30 days following the notice under Rule 9(1). In fact, the proviso to sub-rule (1) of Rule 9 steers clear of any doubt. The proviso speaks about the failure of the first attempt of the secured creditor. Once the secured creditor fails in his first attempt, then the Authorised Officer should "serve, affix and publish notice of sale of not less than 15 days to the borrower, for any subsequent sale".

18. Therefore, the number of notices of sale required to be issued actually depend upon the number of times the property is put to sale. If Rule 9(1) is construed in such a manner as to oblige a secured creditor to issue one more notice apart from the notice under Rule 8(6), the first sale will be preceded by 2 notices and the subsequent sales will be preceded by one notice each. The correct way of looking at the rules is to say that in respect of the first auction, there has to be only one notice under Rule 8(6). But the date of the auction should fall beyond 30 days from the date of publication of sale. If no sale takes place on the first occasion, a second notice is mandated only under the proviso to sub-rule (1) of Rule 9 and this second notice shall be of a duration of 15 days. If the second attempt also fails, a third notice may be issued under the proviso to sub-rule (1) of Rule 9, of a duration of not less than 15 days for the third auction.

21. It may be seen from Rule 8(6) that the main part of the subrule speaks about service of notice of 30 days to the borrower. The proviso to sub-rule (6) of Rule 8 speaks about the publication of notices in Newspapers. Since Rule 9(1) makes a reference to the proviso to Rule

8(6), in the context of public notice and also since there is no reference to Rule 8(6) in Rule 9(1) (except with reference to the proviso) when it speaks about notice of sale served to the borrower, Courts have come to think that two notices are required to be served on the borrower, one under Rule 8(6) and another under Rule 9(1).

22. In fact, the disjunction between – (i) a public notice of sale as referred to in the proviso to sub-rule (6) of Rule 8 and (ii) a notice of sale served to the borrower, maintained in Rule 9(1) by the use of the word “or”, was explained in Mathew Varghese by the Supreme Court. In paragraph-31 of the report, the Supreme Court held in Mathew Varghese that this disjunction should be read as a conjunction. The Court said that the word “or” should be read as “and”.

23. The moment the word “or” appearing in Rule 9(1) is read as “and”, there is no scope for concluding that Rule 9(1) requires one more notice to be served to the borrower, in addition to the notice served to the borrower under Rule 8(6).”

15. In the present case there is a clear gap of 30 days between the date of publication of notice under Rule 8(6) of the Rule of 2002 and date of auction sale. Hence, I am of the considered opinion that learned DRT has committed illegality in holding that there is violation of Rule 8(6) and 9(1) of the Rules of 2002.

16. The respondent argued that the property was under-valued and there is violation of Rule 8(5) of the Rules of 2002. Auction sale was held on 06.02.2018. Valuation was assessed on the basis of valuation report of Shri P. Srinivas, Registered Valuer of the Wealth Tax and Income Tax, vide his report dated 17.11.2017 wherein he assessed the value at market rate Rs.80.00 lakh; realizable value at Rs.70.00 lakh and forced sale value at Rs.65.00 lakh. Property was sold at Rs.80.10 lakh. Accordingly, I am of the view that there is no violation of Rule 8(5) of the Rules of 2002 and the property was not under-valued.

17. On the basis of the discussion made above I am of the view that learned DRT has erred in holding that there is violation of Rule 8(6) and 9(1) of the Rules of 2002. Accordingly, judgement and order passed by learned DRT is liable to be set aside and appeal deserves to be allowed.

18. Appeal is allowed. Judgement and order passed by learned DRT Visakhapatnam is set aside. Consequently, S.A. No. 19 of 2018 filed by

the S.A. applicant is dismissed. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 20th day of April, 2023.