

Violation of disclosure norms under SARFAESI Rules by secured creditor leading to cancellation of auction sale: DRAT KOLKATA

State Bank of India

...Appellant

Sri Anil Kumar Sahoo

...Respondent

Case No: Appeal No. 40 of 2021

Date of Judgement: 14th July, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. S. Pal Chowdhury, Ms. Saswati Sikder, Advocates.

For Respondent: None.

Facts:

A SARFAESI application was filed by the auction purchaser Mr. Anil Kumar Sahoo seeking cancellation of auction sale conducted by State Bank of India on 06.08.2016 and refund of deposit amount of Rs. 18,72,760. Mr. Sahoo had deposited the required amount as per rules and was declared successful bidder. However, possession was not delivered to him by the Bank. It was submitted that at the time of auction sale, Writ Petition No. 3771 of 2016 filed by the borrowers was pending before High Court seeking time for repayment of dues. But this fact was not mentioned in the auction sale notice by the Bank. Hence, there was violation of disclosure norms under Rule 8(6) of

SARFAESI Rules. Accordingly, application under Section 17 was filed seeking appropriate reliefs.

Arguments by Parties:

Arguments by Auction Purchaser:

Non-disclosure by the Bank about pending writ petition amounts to violation of Rule 8(6). Complete details were not provided in auction notice. I was declared highest bidder and deposited the money. But possession was not given due to interim orders of High Court in borrowers' petition. Fact of pending petition should have been disclosed. There is violation of mandatory auction rules prescribed under SARFAESI Act and Rules. Auction sale deserves to be cancelled and money refunded.

Arguments by Secured Creditor (Bank):

Possession could not be delivered due to interim orders of High Court. A writ petition filed later by auction purchaser was also dismissed. There is no violation of Rule 9(4) and 9(5) regarding forfeiture. Proper procedure was followed by us. Borrowers' writ petition was only for seeking time for repayment. It is not related to auction sale, so there cannot be any violation of rules in not disclosing it. Application by auction purchaser is malafide and has ulterior motives. It should be dismissed.

Observations and Decision by DRAT:

Under Rule 8(6), secured creditor is duty bound to disclose all material details about the property put up for auction sale, including any court cases or litigations pending. The writ petition filed by borrowers regarding seeking time for repayment is covered under 'material details'. Non-disclosure amounts to misleading the bidders. Auction purchaser deposited the bid amount as per norms. Possession could not be delivered due to interim orders of High Court in borrowers' writ petition. These facts should have been disclosed by the Bank in the notice. There is clear violation of Rule 8(6) about disclosure requirements under SARFAESI Rules. Auction purchaser has made out a good case for relief. Appeal by Bank has no merits. Judgment of DRAT Cuttack allowing SARFAESI application and cancelling auction sale is correct. Dismissing appeal.

Sections referred:

Section 17(1) of SARFAESI Act, 2002

Rule 8(5) and 8(6) of Security Interest (Enforcement) Rules, 2002

Section 35 of SARFAESI Act

Cases cited and referred:

Rekha Sahu Vs UCO Bank (2013 SCC OnLine All 13203)

So in summary, the key import of the judgment is that secured creditors must comply with the disclosure requirements specified under SARFAESI Rules while conducting auction sales, failing which auction sale can be challenged and cancelled. The appeal against cancellation of auction sale was dismissed.

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Full Text of Judgment:

Instant Appeal has arisen against a judgment and order dated 08.02.2021 passed by the Ld. DRT Cuttack allowing the SA No. 76 of 2020 Anil Kr. Sahoo Vs. State Bank of India.

A SARFAESI Application under Section 17 (1) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act) was filed by the Respondent for cancelling the auction sale and for refund of the deposit money of Rs. 18,72,760/- on the ground that he is an auction purchaser in an auction sale held on 06.08.2016. The required amount as per law was deposited by him. Despite depositing the amount possession was not delivered to him. It is further stated that Writ Petition (C) No. 3771 of 2016 was pending before the Hon'ble High Court when the auction sale was conducted but this fact was not mentioned in the auction sale notice. Accordingly, Application under Section 17 of the Act was preferred by the auction purchaser.

Appellants herein contended that the possession could not be delivered due to interim order passed by the Hon'ble High Court. Thereafter, a Writ Petition was also filed by the SARFAESI Applicant which was also

dismissed. Appellant did not comply the provisions of Rule 9(4) and 9(5) of the Security Interest (Enforcement) Rules, 2002. Accordingly, there was a forfeiture made by the Appellant. As far as description of sale notice is concerned, it is submitted that issue is raised with mala fide and ulterior motive by the SARFAESI Applicant as the Writ petition was filed by the borrowers seeking time to repay the dues of the Bank. Having considered the submissions made by the Learned Counsel for the parties, Ld. DRT allowed the SARFAESI Application holding that non-disclosure of the details of Writ Petition in the auction sale notice is in violation of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Accordingly, S.A. was allowed. Feeling aggrieved, Appellant Bank preferred the Appeal. I have heard the Learned Counsel for the Appellant. Respondent did not appear despite notice.

Learned Counsel for the Appellant would submit that the Writ Petition No. 3771 of 2016 was filed by the borrower form extension of time for making payments. It has no relevance with the auction sale. Hence, there could not be any violation of the Rules. Rule 8(5) and 8(6) of the Security Interest (Enforcement) Rules 2002 are as under:

Rule 8(5) of Security Interest (Enforcement) Rules 2002 Before effecting sale of the immovable property referred to in subrule (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.

Rule 8(6) of Security Interest (Enforcement) Rules 2002 (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

(7) Every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorized officer shall upload the detailed terms and conditions of the sale on the website of the secured creditor 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 terms or conditions which the authorised officer considers it necessary for a purchaser to know in order to judge the nature and value of the movable secured assets In the judgment of Division Bench of the Hon'ble Allahabad High Court in the case of Rekha Sahu Vs UCO Bank (2013 SCC OnLine All 13203) it was held by the Hon'ble High Court that –

“duty is cast upon the authorized officer to disclose to the auction purchaser any material defect in the title failing which it would constitute that auction purchaser was misled. Section 35 of the SARFAESI Act provides that the Act shall have effect. Notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. It clearly shows that it is a special enactment having overriding effect over the general law.”

Secured Creditor was under an obligation to provide detailed information regarding any litigation pending before any Court or Tribunal. But the same was not provided by the secured creditor. Accordingly, there was violation of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Ld. DRT has rightly arrived at a finding. I do not find any merit in the Appeal. Appeal is liable to be dismissed.

Appeal is dismissed.

No Order as to costs.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 14th day of July, 2023.