

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 40 of 2021

(Arising out of SA No. 76 of 2020 in DRT Cuttack)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

State Bank of India, Stressed Assets Recovery Branch, represented
through its Chief Manager, Madhupatna, Cuttack 753010

... Appellants

-Vs-

Sri Anil Kumar Sahoo son of Late Narayan Chandra Sahoo, at Jyostna
Kutir, Hira Cement Lane, P.O. Chandini Chowk, P.s. Lalbag, District
Cuttack 753002

... Respondent

Mr. S. Pal Chowdhury, Learned
Counsel, Ms. Saswati Sikder,
Learned Counsel for the
Appellant
None for the Respondent

JUDGMENT : On 14th July, 2023

THE APPELLATE TRIBUNAL :

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 for 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 sub-rule (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.

ORDER

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.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 14th July, 2023
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