SUPREME COURT OF INDIA

J.Rajiv Subramaniyan

Vs.

Pandiyas

C.A.No.3865 of 2014

(Surinder Singh Nijjar and A.K.Sikri JJ.)

14.03.2014

JUDGMENT

SURINDER SINGH NIJJAR,J.

1. Leave granted.

2. These special leave petitions are directed against the final judgment and order dated 14th June, 2011 passed by the Madras High Court (Madurai Bench) in W.A.No.417 of 2011 dismissing the aforesaid Writ Appeal filed by the appellants.

3. We have heard the learned counsel for the parties at length.

4. Mr. Ashok Desai learned senior counsel appearing on behalf of the appellants has submitted that although many issues have been raised in the SLP, he is not pressing the point that the High Court erred in entertaining the writ petition filed by respondent Nos.1 and 2. The point with regard to the maintainability of the writ petition was taken on the basis of a judgment of this Court in the case of United Bank of India vs. Satyawati Tondon & Ors.[1]. It was urged before the High Court that an alternative remedy being available to respondent Nos.1 and 2 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act, 2002), the writ petition would not be maintainable. The second issue with regard to the maintainability was based on the fact that earlier respondent Nos. 1 and 2 had filed Writ Petition Nos.5027-28 of 2006 challenging the auction sale notice dated 23rd May, 2006. However, these writ petitions were withdrawn on 3rd July, 2006. The

High Court did not give any liberty to respondent Nos. 1 and 2 to file fresh writ petition. Mr. Desai very fairly submitted that it is not necessary to examine the issues on maintainability of the writ petition, as the entire issue is before this Court on merits.

5. Mr. Ashok Desai has pointed out that respondent Nos.1 and 2 had taken various loans from respondent No.3-Bank. Upon failure of Respondent Nos. 1 and 2 to repay the loan, the assets of respondent Nos.1 and 2 which had been mortgaged with respondent No.3-Bank were classified as non-performing assets (NPA). Inspite of such action having been taken by respondent No.3-Bank, respondent Nos.1 and 2 failed to regularize the bank account. Therefore, on 8th June, 2005, the bank-respondent No.3 issued notice under Section 13(2) of the SARFAESI Act, 2002 followed by a possession notice on 12th January, 2006 under Section 13(4) of the said Act. Respondent Nos.1 and 2 challenged the aforesaid two notices by filing Writ Petition Nos. 4174/2006, 4175/2006, 5027/2006 and 5028/2006. In the meantime, auction sale was fixed on 7th July, 2006. But no sale took place as there were no bidders. On 28th August, 2006, respondent Nos. 1 and 2 sought cancellation of the auction notice and sought permission of respondent No.3-Bank to sell the secured assets by private Treaty. It was stated that as on that date the outstanding balance due to the bank was a sum of Rs.1.57 crores. A request was made to break up the aforesaid amount as follows:

> (a) Machineries of M/s. Suruthi Fabrics - 0.40 lacs (b) Land and building of M/s. Suruthi Fabrics - 0.70 lacs (c) Pandias Garment Factory land and Building - 0.47 lacs And Suruthi Fabrics 5.51 acres Land

6. Permission was sought to sell the assets as stated above within six months. On 11th September, 2006, respondent Nos.1 and 2 made a payment of Rs.42 lacs to respondent No.3-Bank, by selling machinery with the permission of respondent No.3-Bank. A request was also made for an extension of two moths for paying the remaining amount after selling the secured assets. On 8th December, 2006, respondent No.3- Bank gave approval for private sale of the immovable property to the appellants and for issue of sale certificate. On the very same date, the secured assets were sold in favour of the petitioner for a consideration of 123.10 lacs. It is not disputed by Mr. Vikas Singh, learned senior counsel appearing for Respondent No.3, that the sale was affected through Ge-Winn Management Company, Resolution Agents. This is also evident from the proceedings of the meeting held between respondent No.3-Bank and Ge-Winn on 8th December, 2006.

7. We may point out here that the reserve price of the secured assets was fixed at 123 lacs. Sale deed was executed in favour of the appellants by respondent No.3 on 20th December, 2006, as the entire considerations have been paid on 15th December, 2006. On 21st December, 2006, respondent Nos.1 and 2 were informed by respondent No.3-Bank that the secured assets had been sold for more than the amount offered by them in the letter dated 28th August, 2006. At that stage, respondent Nos.1 and 2 filed Writ Petition No.325 of 2007 without disclosing that the earlier Writ Petition Nos.5027-28/2006 challenging the auction notice dated 23rd May, 2006 had been withdrawn without the court giving liberty to respondent Nos. 1 and 2 to file a fresh writ petition.

8. Upon completion of the proceedings inspite of the preliminary objections taken by the appellants, the learned Single Judge allowed the writ petitions. The sale in favour of the petitioner was held to be vitiated on the ground that respondent No.3-Bank failed to follow the mandatory provisions of Rules 8(5), 8(6) and 9(2) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rules, 2002'). But a direction was issued to refund the amount paid by the petitioner i.e. Rs.1crore 41 lacs with interest at 9% per annum from April, 2007.

9. Aggrieved by the aforesaid order, the appellants filed Writ Appeal No.4127/2011 in the High Court, which has also been dismissed.

10. Mr. Ashok Desai submits that the petitioner is a bona fide purchaser and has paid the full consideration. Sale deed has been duly executed. Possession of the property is with the appellants since 2006. Therefore, respondent Nos.1 and 2 should not be permitted at this stage to claim that the sale is vitiated on the ground that it has been affected through an agent of respondent No.3-Bank, namely, Ge-Winn. Mr. Desai submitted that the Single Judge as well as the Division Bench have wrongly held that there has been violation of Rules 8(5), 8(6), 8(8) and 9(2) of the Rules, 2002. Mr. Desai further submitted that it would be equitable to permit the petitioner to keep the plot which is adjacent to the property of the petitioner. Respondent Nos.1 and 2 can be permitted to take the other plots.

11. Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the respondent Nos. 1 and 2 relying on the judgment of this Court in Mathew Varghese Vs. M.Amritha Kumar & Ors. in C.A.No.1927-1929 of 2014 decided on 10th February, 2014 submits that the Rules, 2002 are mandatory in nature. In the present case, the sale has been effected in violation of the aforesaid rules. Both the learned Single Judge as well as the Division Bench have come to the conclusion

that the provisions of the aforesaid rules have not been followed. It is not disputed by any of the parties that there is no agreement between respondent Nos. 1 and 2 and respondent No.3-Bank, in writing, to affect the sale by Private Treaty. Mr. Vikas Singh, learned senior counsel appearing for respondent No.3-Bank, however, pointed out that the respondent Nos.1 and 2 had filed a review petition in which it was averred that they may be permitted to sell the secured assets by Private Treaty. Therefore, according to Mr. Vikas Singh, respondent Nos. 1 and 2 cannot now be heard to say that they had not given their consent to affect the sale by Private Treaty. We are unable to accept the submission made by Mr. Vikas Singh that there is no violation of the Rules, 2002. In our opinion, the findings recorded by the learned Single Judge as well as the Division Bench of the High Court that there has been a violation of Rules, 2002 are perfectly justified.

12. This Court in the case of Mathew Varghese Vs. M.Amritha Kumar & Ors.[2] examined the procedure required to be followed by the banks or other financial institutions when the secured assets of the borrowers are sought to be sold for settlement of the dues of the banks/financial institutions. The Court examined in detail the provisions of the SARFAESI Act, 2002. The Court also examined the detailed procedure to be followed by the bank/financial institutions under the Rules, 2002. This Court took notice of Rule 8, which relates to Sale of immovable secured assets and Rule 9 which relates to time of sale, issue of sale certificate and delivery of possession etc. With regard to Section 13(1), this Court observed that Section 13(1) of SARFAESI Act, 2002 gives a free hand to the secured creditor, for the purpose of enforcing the secured interest without the intervention of Court or Tribunal. But such enforcement should be strictly in conformity with the provisions of the SARFAESI Act, 2002. Thereafter, it is observed as follows:-

> "A reading of Section13(1), therefore, is clear to the effect that while on the one hand any SECURED CREDITOR may be entitled to enforce the SECURED ASSET created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act."

13. This Court further observed that the provision contained in Section 13(8) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers in as much as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under Article 300A of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset can not deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed

in the SARFAESI Act, 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or any one on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the SARFAESI Act, 2002. Thereafter, in Paragraph 27, this Court observed as follows:-

> "27. Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, in particular, Section 13(8), any sale or transfer of a SECURED ASSET, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the SECURED CREDITOR with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale."

14. As noticed above, this Court also examined Rules 8 and 9 of the Rules, 2002. On a detailed analysis of Rules 8 and 9(1), it has been held that any sale effected without complying with the same would be unconstitutional and, therefore, null and void.

15. In the present case, there is an additional reason for declaring that sale in favour of the appellant was a nullity. Rule 8(8) of the aforesaid Rules is as under:-

> "Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing."

16. It is not disputed before us that there were no terms settled in writing between the parties that the sale can be affected by Private Treaty. In fact, the borrowers – respondent Nos. 1 and 2 were not even called to the joint meeting between the Bank – Respondent No.3 and Ge-Winn held on 8th December, 2006. Therefore, there was a clear violation of the aforesaid Rules rendering the sale illegal.

17. It must be emphasized that generally proceedings under the SARFAESI Act, 2002 against the borrowers are initiated only when the borrower is in dire-straits. The provisions of the SARFAESI Act, 2002 and the Rules, 2002 have been

enacted to ensure that the secured asset is not sold for a song. It is expected that all the banks and financial institutions which resort to the extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure, that such sale of the asset provides maximum benefit to the borrower by the sale of such asset. Therefore, the secured creditors are expected to take bonafide measures to ensure that there is maximum yield from such secured assets for the borrowers. In the present case, Mr. Dhruv Mehta has pointed out that sale consideration is only Rs.10,000/- over the reserve price whereas the property was worth much more. It is not necessary for us to go into this question as, in our opinion, the sale is null and void being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the Rules, 2002.

18. We, therefore, have no hesitation in upholding the judgments of the learned Single Judge and the Division Bench of the High Court to the effect that the sale effected in favour of the appellants on 18th December, 2006 is liable to be set aside.

19. This now brings us to moulding the relief in the peculiar facts and circumstances of this case.

20. As noticed earlier, Mr. Ashok Desai had emphasized on behalf of the appellants that no blame at all can be attributed to them. The bank had decided to sell the immovable properties to the appellants for Rs.1,23,10,000/- against the reserve price of Rs.1,23,00,000. This is evident from the joint meeting of the bank held with Ge-Winn on 10th December, 2006, wherein it is observed as follows:- "Referring to the above in the presence of the undersigned it has been decided to effect the sale to M/s. Susee Automobiles Pvt. Ltd., Madurai and Smt. Nirmala Jeyablan, W/o Shri Jayabaaalan, No.4, S.V. Nagar, S.S. Colony, Madurai for a consideration of Rs.123.10 lakhs (Rupees one crore twenty three lakhs and ten thousand only) against the reserve price of Rs.123.00 lakhs and issue Sale Certificate for registration under private treaty."

21. Mr. Desai had also pointed out that the borrowers -Respondent No.1 and 2 had evaluated the property at Rs.117 lakhs. The evaluation was acknowledged by Respondent Nos. 1 and 2 in the letter dated 28th August, 2006. Therefore, the reserve price was fixed based upon the aforesaid figures. The appellants bought the property for more than the reserve price. The appellants paid the entire consideration within three days of the sale, i.e., on 15th December, 2006. The Sale Deed was executed in their favour on 20th December, 2006. Possession was

admittedly delivered on 20th December, 2006 also. The appellants have also incurred substantial loss as they have been unnecessarily dragged into litigation. He pointed out that the appellants have in fact incurred losses of Rs.3 crores as they were deprived of using the property in view of the interim orders passed by the High Court and they were forced to take other property on monthly rent of Rs.3 lakhs from January 2007. He, therefore, submitted that the proposal made by the appellants for being permitted to keep the plot adjacent to the property already owned by them, be accepted. In the alternative, learned senior counsel submitted that the High Court has unnecessarily reduced the amount of interest on the amount deposited by the appellants with the bank would bear only 4% interest. He submitted that the appellants are entitled to 18% compound interest since the date the amount was deposited till refund.

22. On the other hand, Mr. Dhruv Mehta pointed out that property of Respondent No.1 has been sold for a ridiculously low price, as the bank is interested only in regularizing the account of the borrower. He has submitted that respondent Nos. 1 and 2 are prepared to compensate the appellants, to a reasonable extent, but not to the extent claimed by Mr. Desai.

23. On the other hand, Mr. Vikas Singh has submitted that in case the sale is to be set aside and the properties have to be returned to the borrowers, the dues of the bank also have to be secured, which are now in the region of Rs.4 crores.

24. We have considered the submissions made by the learned counsel for the parties.

25. Initially on our suggestion, respondent Nos. 1 and 2 had quantified the amount in accordance with the directions issued by the learned Single Judge. The learned Single Judge had ordered refund of Rs.1,41,00,000/-, (Representing Rs.1,23,10,000/- towards Sale Price and Rs.18,90,000/- towards Stamp Duty with interest @9% per annum from April 2007). However, since we had accepted the second alternative (partially) of Mr. Ashok Desai, the appellants and respondents have jointly submitted the following chart:-

> |Amount quantified by the |Interest@ 18% |Total | |Learned Single Judge |from April 2007 | | | |to 15.06.2014 | | |Rs. 1,41,00,000/- |Rs. 1,84,00,500/- |Rs. 3,25,00,500/- | |Rs. 1,23,10,000/- Sale Price| | | |Rs. 18,90,000/- (Stamp Duty)| | |

26. Mr. Dhruv Mehta has stated that Respondent Nos. 1 and 2 are prepared to refund the sale amount paid by the appellants as Sale Price together with 18% simple interest from 1st July, 2007 till 15th June, 2014. The total amount spent on Stamp Duty shall also be refunded to the appellants. The total amount shall be paid to the appellants by 15th June, 2014. Mr. Desai had pointed out that the amount deposited with the bank, which is said to be lying in a FDR Bearing 8.25% per annum ought to be refunded by the bank to the appellants. Upon the entire amount being repaid to the appellants, the possession of the property purchased by the appellants will be delivered to the Respondent Nos.1 and 2.

27. Insofar as the submission of Mr. Vikas Singh learned senior counsel is concerned we are unable to accept the same in the facts and circumstances of this case It would be relevant to point out that the learned Single Judge of the High Court after holding that the sale in question was invalid, directed making of payments by respondent Nos. 1 and 2 to respondent No.3 bank with clear direction that on such payment, insofar as the bank is concerned its dues shall stand settled. Not only respondent Nos. 1 and 2 made the payment as directed which was accepted by respondent No.3 bank, insofar as respondent No.3 bank is concerned it even accepted the said judgment and did not file any appeal thereagainst. Only the appellant filed the appeal. Though the order of the learned Single Judge about the validity of the sale had been affirmed, the Division Bench interfered with the other direction of the learned Single Judge which should not have been done as bank had not challenged the order of the learned Single Judge. We are, therefore, of the opinion that in the facts of this case, once the payment is made to the appellant by respondent Nos.1 and 2 in the manner stated hereinafter, the possession of the property shall be delivered to the respondent Nos.1 and 2 with no further liability towards the bank

28. In view of the aforesaid, we hold that the sale in favour of the appellants dated 18th December, 2006 and the subsequent delivery of possession to the appellants is null and void. The sale is accordingly set aside. The appellants are directed to deliver the possession of the property purchased by them under the Sale Deed dated 20th December, 2006 to Respondent Nos. 1 and 2 immediately upon receiving the entire amount as directed hereunder:- (i) The State Bank of India – Respondent No.3 directed to refund the entire proceeds of the FDR in which the sale consideration was deposited together with accrued interest forthwith. (ii) The Respondent Nos. 1 and 2 will ensure that the entire amount due to the appellants is paid on or before 15th June, 2014. (iii) Upon receipt of the entire amount, the possession shall be delivered to Respondent Nos. 1 and 2.

29. With these observations, the appeals are disposed of with no order as to costs.

[1] [2010 (8) SCC 110]
[2] 2014 (2) Scale 331