

BALAJI AGRO INDUSTRIES v. UNION OF INDIA , (2022-2)206 PLR 616 , 2022 PLRonline 1766

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice M.S. Ramachandra Rao and Mr. Justice Harminder Singh Madan.

M/S. BALAJI AGRO INDUSTRIES & CO. – Petitioners,

Versus

UNION OF INDIA and others – Respondents.

CWP-2486-2022

(i) Security Interest (Enforcement) Rules, 2002, Rule 19(1) - E-auction - Personal service of the e-auction notice on loanee - Rule mandatory. [Para 6]

(ii) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) Section 14 - It is not open to the secured creditor to directly take physical possession of the property by dispensing with the requirement of obtaining the orders by the District Magistrate - Report obtained by secured creditor appears to have been obtained from a Valuer who presumed that the plot is a “residential” one without a compound wall with no construction thereon, contrary to the earlier report which depicted that the property is a “commercial one” with a compound wall and structures thereon - Sale Schedule set aside - Shall restore possession of the property back to the petitioners - SARFAESI Act, 2002 S. 14. [Para 8, 10]

(iii) NPA - Supreme Court order in - Plea that petitioners’ loan account has wrongly been declared as NPA on 30.11.2020 contrary to the order passed by the Supreme Court prohibiting declaration of the loan account of any borrower as an NPA which was in force between 03.09.2020 till 23.03.2021 (*Small Scale Industrial Manufactures Association v. Union of India (UOI) & Ors.*, Writ Petition No.476/2020 , decided vide order dated 23.03.2021) - Bank’s contention that in Section 13(2) notice issued on 27.04.2021 for the first time, the loan account was declared as NPA on 30.11.2020 but such a declaration has not been issued during the subsistence of the order of the Supreme Court - We agree with the contention of counsel for the bank and hold that there is no violation of the order of the Supreme Court. [Para 3, 4]

Cases referred to:-

1. (2014)5 SCC 610, *Mathew Varghese v. M. Amritha Kumar*.

Mr. Mahesh Dheer, for the petitioners. Mr. Anshuman Harit, for Mr. Arvind Seth, for UOI.
Mr. Gaurav Goel, for the respondents No.2&3

M.S. Ramachandra Rao, J. (Oral) - (23rd February, 2022) - Heard counsel for the parties.

2. In this Writ Petition, the petitioners have raised the contention that the petitioners' loan account has wrongly been declared as NPA on 30.11.2020 contrary to the order passed by the Supreme Court prohibiting declaration of the loan account of any borrower as an NPA which was in force between 03.09.2020 till 23.03.2021. It is also the contention of the counsel for the petitioners that the notice of sale has not been served upon them. He further contends that the property was shown to be a non-residential property having a boundary wall in the valuation report dt.11.02.2019 obtained by the Bank in which the property was valued at Rs.74,02,000/- but in the subsequent valuation report dt. 06.01.2022, the property was treated as residential plot without any structure and without any boundary wall and its value was reduced to Rs.63,36,000/- though there has been a gap of almost two years between the two valuations. Lastly, he also contends that on the basis of such valuation, the sale is proposed to be conducted by the first respondent Bank on 24.02.2022, but the sale notice dt. 23.01.2022 has not been served upon the petitioners. It is also contended that in the reply filed by the respondent-Bank, a stand has been taken in para 11 that the mortgaged property is only a plot and there is only one katcha room and katcha store constructed in the said plot and there is no person residing in the said plot, and so there is no requirement of obtaining the orders from the District Magistrate for taking the physical possession of the said property under Section 14 of the SARFAESI Act, 2002, and such a stand can't be countenanced.

3. Mr. Gaurav Goel, Advocate for the respondent-Bank refuted the said contention and points out that in Section 13(2) notice issued on 27.04.2021 for the first time, the loan account was declared as NPA on 30.11.2020 but such a declaration has not been issued during the subsistence of the order of the Supreme Court.

4. We agree with the contention of counsel for the second respondent and hold that there is no violation of the order of the Supreme Court.

5. The counsel for respondent-Bank also submits that it is not possible to regularize the loan account (OD) of the petitioners since the unit of the petitioners has not been working since 2018 and as per the inspection report (R2), there are no stocks available which could be treated as security by the respondents No.2&3.

6. In the reply/affidavit dt.22.02.2022 filed by the respondent-Bank today, which is taken on record, there is no mention in para 16 about the personal service of the e-auction notice dt. 19.01.2022/23.01.2022 on the petitioners. Therefore, it cannot be said that there is compliance with the Rule 9(1) of the Security Interests (Enforcement) Rules, 2002 which has been interpreted by the Supreme Court in *Mathew Varghese v. M. Amritha Kumar*, ¹ (2014) 5 SCC 610 as mandatory.

7. Also, we find substance in the contention of the counsel for the petitioners that the second valuation report obtained by respondents No.2&3 appears to have been obtained from a Valuer who presumed that the plot is a “residential” one without a compound wall with no construction thereon, contrary to the earlier report dt. 11.02.2019 obtained by respondents No.2&3 which depicted that the property is a “commercial one” with a compound wall and structures thereon.

8. Therefore, the sale scheduled for 24.02.2022 as per the second valuation report dt. 06.01.2022 cannot be allowed to be proceeded with and we hold that the respondents No.2&3 shall do a fresh valuation of the property before putting the property to sale again.

9. Also it is not open to the respondents 2&3 to directly take physical possession of the property by dispensing with the requirement of obtaining the orders by the District Magistrate under Section 14 as is contended in para 14 of the reply/affidavit because such is the procedure contemplated under the Statute and it is required to be followed.

10. Having regard to the above, the Writ Petition is allowed and the sale scheduled to be held on 24.02.2022 is set aside giving liberty to the respondents No.2&3 to conduct the fresh valuation of the secured asset after obtaining a fresh valuation from the competent Valuer; possession of the property shall be taken by respondents No.2&3 by strictly complying with the Section 14 of the Act and if any application is moved by respondents No.2&3, in this regard before the District Magistrate, he shall decide the same expeditiously; Respondents No.2&3 shall also restore back the possession of the property which is under lock and key to the petitioners who shall, however, not deal with the same, in any manner, or alter the physical features of the property.

The Writ Petition is allowed as above. No costs.

Sd/- Harminder Singh Madaan, J.

R.M.S.

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Petition allowed.