

Security Interest (Enforcement) Rules, 2002, Rule 8, 9 - Securatisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) - Waiver - sale - Borrower tried to thwart the earlier attempts of the Bank in selling the property - When the first notice was issued, the borrower filed the writ petition - . However, it is to be borne in mind that in the said Writ Petition no interim order was passed staking the auction on the stipulated date, the only stay granted was against confirmation of sale - That did not preclude anybody from participating in the auction - We are mindful of the ground realities that many times pendency of such a Writ Petition challenging the auction notice and the kind of stay granted, even partial in nature, deter the intending buyers to come forward and participate in the auction - Be as it may, we find out that even in the second attempt when the reserve price was reduced to Rs. 2.39 crores, the highest bid received was in the sum of Rs. 2.25 crores - Further, even the bid of the appellant which was accepted was in the sum of Rs.2.16 crores - Likewise, after the second auction when the Bank requested the borrower to accept the bid of Rs.2.25 crores giving its reasons and the borrower instead of doing so took initiative resulting in OTS but defaulted therein, it would merely indicate that the borrower was at fault in not adhering to the OTS - By no logic it can be deduced therefrom that the Bank was relieved from its obligation not to follow the mandatory procedure contained in the Rules, while taking fresh steps for the disposal of the property. [Para 24]

Held,

The moot question is, even if there were delaying tactics adopted by the borrower in respect of first two auctions, whether that conduct of the borrower would amount to waiving the mandatory requirement of publishing subsequent notice dated 27.4.2006 fixing the date of auction as 8.5.2006? Our answer has to be in the negative. The aforesaid conduct cannot be taken as waiver to the mandatory condition of 30 days notice for auction as well as other requirements. For examining the plea of waiver, we will have to see as to whether by implied or express actions, the borrower has waived the aforesaid mandatory requirement when the property was put to sale. We do not find, nor it is suggested, even the slightest move on the part of the borrower in this regard which may amount to waiver either express or implied. On the contrary, when notice dated 27.4.2006 was published, the borrower immediately filed the Writ Petition 6471 of 2006 challenging the auction notice. Thus, its conduct, far from waiving the aforesaid requirement, was to confront the bank by questioning its validity. It is a different matter that it had to withdraw the said writ petition in view of availability of alternate remedy. Immediately, it filed application under Section 18 of the SARFAESI Act. There is, thus, not even an iota of material suggesting any waiver on the part of the borrower. [Para 25]

The moment we find that the mandatory requirement of the Rules had not been waived by the borrower, consequences in law have to follow. As held in Mathew Varghese's case, when there is a breach of the said mandatory requirement the sale is to be treated as null and void. Moreover, the appellant have no answer to many other infirmities pointed out by the High Court. We, therefore, are of the opinion that present appeals lack merit.[Para 26]

Before we part with, it is imperative to mention that the purchaser has paid a sum of Rs.1.86 crores towards purchase of property and Rs.30 lakh towards moveable items to the Bank. He has also spent Rs.1,86,335/- towards registration fee and Rs.15,62,400/- towards stamp duty. In addition, dues towards municipal tax, Sales Tax liability, dues of Employees State Insurance Corporation, Employees Provident Fund and Belgaum Industrial Cooperative Bank have also been paid. A total whereof comes to Rs. 49,91,000/-. These were the liabilities of the borrower. In this way, total amount of Rs. 2,83,39,735/- is paid by the purchaser. He has also discharged municipal tax liability in the sum of Rs.2,86,078/- for the period 1.4.2007 to 31.3.2009. As we have affirmed the order of the High Court setting aside the sale, we grant two months time to the borrower to discharge the entire liability of the Bank. The borrower shall also reimburse the amount of registration fee and stamp duty to the purchaser. The direction to pay this amount is given having regard to the conduct of the borrower on earlier occasions. If the borrower pays the amount due to the Bank, registration charges, stamp duty as well as amount of encumbrances paid by the purchaser, which was the liability of the borrower i.e. a sum of Rs.49,91,000/- + 2,86,078/-, the property shall revert back to the borrower. If the aforesaid amounts are not paid within the aforesaid two months, the Bank shall be at liberty to proceed with the sale of the property following due procedure under the law. [Para 27]

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