

ID 9409508

Telangana High Court

UJJAL BHUYAN, SUREPALLI NANDA, JJ

Sri M. Hari Prasad Reddy v. The Authorised Officer Union Bank of India

WRIT PETITION No.21823 OF 2020

07.06.2022

(i) Security Interest (Enforcement) Rules, 2002 R. 9(4) - Respondent bank has stated that the sale confirmation letter could not be sent to the petitioner through registered post with acknowledgement due because of the lockdown imposed by the Government due to COVID-19 pandemic - Thus, it had not sent any sale confirmation letter to the petitioner through registered post with acknowledgement due - It would mean that there was no sale confirmation letter issued by the Secured creditor bank - Time period for depositing the balance 75% of the amount would not deem to have been started. [Para 35]

(ii) Security Interest (Enforcement) Rules, 2002 R. 9(4) - Auction - Amount not deposited - Stay - Affect of - Interest - Non consideration for grant of 90 days extention period - Respondent bank could not have issued the letter dated 27.03.2020 (prior to 22.04.2020) said to have been sent by e-mail because that would have been in contravention of the stay granted by the Tribunal in an SA filed against the bank, as extended - Even if issued, the same would be of no legal consequence being in violation of an order passed by a statutory Tribunal - From an analysis of Sub-Rule (4) of Rule 9, it is evident is that payment of balance amount of 75% of the sale price by the purchaser to the authorized officer of the secured creditor should be made within 15 days of confirmation of sale of the immoveable property - Respondent bank could not issue sale confirmation letter because of stay order passed by the Tribunal on 25.02.2020 - If this is the position, it could not have issued the sale confirmation on 27.03.2020 as the stay order granted on 25.02.2020 was extended by the Tribunal vide the order dated 23.03.2020 for a further period of four weeks - In other words, respondent bank could not have issued sale confirmation letter on 27.03.2020 when the stay was in force - We do not find any exercise undertaken by respondent bank to extend the period for deposit of the balance amount which is permissible up to three months - The Court while issuing notice had also granted interim stay which order continues to operate till date - It is settled proposition that an order of the Court should cause prejudice to none - In view of the stay granted by this Court, which continues till today, no blame can be laid at the door of the petitioner that because of the stay order passed by this Court, the bank has suffered loss in terms of interest or enhanced value of the land and therefore it should be compensated - Such a stand taken by respondent No.1, which is a public sector undertaking, cannot be appreciated. [Para 38, 39]

(iii) Security Interest (Enforcement) Rules, 2002 R. 9(4) - Auction - Amount not deposited - Lockdown - Covid - The respondent bank had allegedly issued sale confirmation letter dated 27.03.2020 (which according to us could not have been issued and was not issued) there was complete lockdown in the country in view of COVID-19 pandemic - To expect the petitioner to pay the balance 75% of the sale amount within the lockdown period and thereafter to take an adverse view for non-payment would not at all be justified. [Para 40]

ORDER:

(Per Hon'ble Sri Justice Ujjal Bhuyan) Heard Mr.C.V.Mohan Reddy , learned senior counsel representing Mr. Ch.Siva Reddy, learned counsel for the petitioner and Dr. K.Lakshmi Narasimha, learned counsel for respondent No.1.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to respondent No.1 to issue confirmation of sale after withdrawing letters dated 08.10.2020 as well as 13.10.2020.

3. Case of the petitioner is that petitioner is engaged in software business with interest to make investment in real estate. Respondent No.1 issued e-auction sale notice dated 22.01.2020 for sale of the schedule properties. It may be mentioned that the schedule properties were furnished as security for the loans availed of by respondent No.2. As respondent No.2 committed default in repayment of loan, respondent No.1 invoked provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly 'the SARFAESI Act' hereinafter) and consequently issued the e-auction sale notice. There were three schedule properties i.e. Lot 'A', Lot 'B' and Lot 'C'.

4. Petitioner was interested in Lot 'A' property for which the reserve price was fixed at Rs.7,21,82,000-00 and Earnest Money Deposit (EMD) was fixed at Rs.72,25,000-00.

5. As per the condition in the e-auction sale notice, petitioner deposited the EMD of Rs.72,25,000-00 on 24.02.2020 and participated in the online auction on 27.02.2020. Petitioner was declared as the highest bidder in respect of Lot 'A' property at his bid amount of Rs.9,17,57,000-00. Accordingly, petitioner's bid was accepted and was declared as the successful bidder for Lot 'A' schedule property. In terms of the conditions of sale, petitioner deposited Rs.1,57,14,250-00 on 28.02.2020 which together with the EMD of Rs.72,25,000-00 deposited on 24.02.2020 amounted to 25% of the bid amount i.e. Rs.2,29,39,250-00. 6 Petitioner was waiting for the letter of confirmation of sale as he was informed that he would have to pay the balance 75% of the sale price within 15 days of receipt of the letter of confirmation of sale.

7. According to the petitioner, despite payment of 25% of the sale price, he did not receive letter of confirmation. When he enquired with the first respondent about the delay in issuing the letter of confirmation of sale, petitioner was informed that respondent No.2 had filed Securitization Application No.37 of 2020 before the Debts Recovery Tribunal-I, Hyderabad (Tribunal) wherein it had obtained an order dated 25.02.2020 staying

confirmation of sale subject to depositing 15% of the total outstanding dues in three installments. Bank had informed the petitioner that respondent No.2 had paid Rs.1,74,42,408-00 being the first installment in terms of order dated 25.02.2020 passed by the Tribunal and that the sale would be confirmed if respondent No.2 committed default in payment of the other two installments.

8. Petitioner has stated that he has not been informed about the developments in respect of S.A.No.37 of 2020 filed by the second respondent. However, petitioner continued to approach respondent No.1 for issuance of sale confirmation to enable him to pay the balance sale price. However, respondent No.1 never informed the petitioner of any such development. On the contrary, respondent No.1 issued a letter dated 29.08.2020 alleging that on 27.03.2020 sale confirmation was sent to the petitioner but petitioner did not comply with the condition of payment of 75% of sale price within 15 days of receipt of the said letter dated 27.03.2020. Therefore, the amount already paid by the petitioner would be forfeited.

9. Petitioner replied on 10.09.2020 stating that he had not received any letter from respondent No.1, much less, the letter dated 27.03.2020 and that he was ready to pay the balance sale price of 75% within 15 days of receipt of the letter of sale confirmation. Respondent No.1 was requested to withdraw the letter dated 29.08.2020.

10. Without issuing fresh letter of sale confirmation, respondent No.1 issued letter dated 15.09.2020 advising the petitioner to pay the amount of 75% of the sale price immediately, clarifying that the sale would be subject to outcome of S.A.No.37 of 2020.

11. Since payment of 75% amount on receipt of letter dated 15.09.2020 without receiving fresh letter of sale confirmation would amount to violation of Rule 9 (4) of the Security Interest (Enforcement) Rules, 2002 (briefly, 'the SARFAESI Rules' hereinafter), petitioner again requested respondent No.1 by letter dated 07.10.2020 to issue fresh letter of sale confirmation by withdrawing letter dated 29.08.2020. However, without reference to petitioner's letter dated 07.10.2020, respondent No.1 issued letter dated 08.10.2020 informing the petitioner that as per the terms and conditions of the e-auction notice, 25% of the sale consideration paid by the petitioner was forfeited. This was followed by another letter dated 13.10.2020 stating that question of withdrawal of earlier letter dated 29.08.2020 would not arise.

12. On verification of the record of S.A.No.37 of 2020 pending before the Tribunal, petitioner could come to know that respondent No.2 as the debtor had filed the said securitization application under Section 17 of the SARFAESI Act challenging the e-auction sale notice dated 22.01.2020 fixing auction sale on 27.02.2020. Tribunal had passed an interim order on 25.02.2020 staying confirmation of sale subject to applicant (respondent No.2) depositing 15% of the total outstanding dues in three installments- first installment of 5% to be deposited within two weeks from the date of the order; 2nd installment of 5% to be deposited within two weeks thereafter; and 3rd installment of 5% within two weeks of deposit of 2nd installment. However, respondent No.2 did not comply with the aforesaid conditional stay order by not paying the 2nd and 3rd installments. This was brought to the

notice of the Tribunal by first respondent, vide Memo dated 25.06.2020.

13. Respondent No.2 filed petition before the Tribunal for extension of time for payment of 2nd and 3rd installments which was numbered as I.A.No.555 of 2020. Tribunal extended the timeline on 23.03.2020 for four weeks. Thus the time limit for payment of the 2nd and 3rd installments stood extended till 22.04.2020. Therefore, respondent No.1 could not have issued sale confirmation letter on 27.03.2020. Asserting that sale confirmation letter dated 27.03.2020 was never issued to the petitioner, it is, however, stated that petitioner did receive subsequent letters dated 08.10.2020 and 13.10.2020.

14. With the above grievance, the present writ petition came to be filed seeking the reliefs as indicated above. 15 This Court, by order dated 10.12.2020, issued notice and granted interim stay. Order dated 10.12.2020 reads as under:

"Heard Sri C.V.Mohan Reddy, learned senior counsel representing Sri Ch.Siva Reddy, learned counsel for the petitioner, who submits that auction was conducted on 27.02.2020 and the petitioner, being highest bidder, has deposited Rs.72,25,000/- out of Rs.2,29,39,250/- which is the 25% of the bid amount, within the prescribed time. But as on today, no certificate confirming the sale was issued but still the impugned proceedings were issued by the respondent - bank showing the amount deposited by the petitioner before it has been forfeited. It is further submitted that since confirmation of sale has not been issued, the petitioner will not be able to pay the balance amount. He also submitted that conditional stay granted by the tribunal has not been complied but still the respondent has not issued sale certificate. As such, the petitioner cannot be faulted for not depositing further amount. Notice to the 1st respondent - bank.

Personal notice is permitted.

Post on 08.01.2021.

Till then, there shall be interim stay."

16. Counter affidavit has been filed by respondent No.1. Stand taken by the answering respondent is that at the request of respondent No.2, respondent No.1 had sanctioned loan to respondent No.2. However, respondent No.2 defaulted in repayment of the loan. As a result, respondent No.1 invoked provisions of the SARFAESI Act. Strictly following the procedure laid down under the SARFAESI Act, respondent No.1 put up for sale the schedule properties i.e. Lot 'A', Lot 'B' and Lot 'C'.

17. It is further asserted that petitioner participated in the auction sale for Lot 'A' property and was the highest bidder at Rs.9,17,57,000-00 and in terms of the conditions of sale, petitioner had deposited an amount of Rs.72,25,000-00 on 24.02.2020 towards EMD and upon declaration by respondent No.1 that he was the successful bidder for Lot 'A' property, petitioner deposited further amount of Rs.1,57,14,250-00, totaling to Rs.2,29,39,250-00 being 25% of the sale price.

18. Respondent No.2 filed S.A.No.37 of 2020 before the Tribunal challenging the e-auction

sale notice. Tribunal passed an interim order on 26.02.2020 stating that respondent No.1 could go ahead with the auction of the schedule properties on 27.02.2020 but should not confirm the sale in favour of the highest bidder subject to the applicant depositing 15% of the total outstanding dues in three installments as already mentioned above. It was clarified by the Tribunal that in case of failure by the applicant (respondent No.2) to comply with the above conditions, the interim stay would stand vacated and respondent No.1 would be at liberty to confirm the sale in favour of the highest bidder in respect of the schedule properties which would however be subject to outcome of S.A.No.37 of 2020.

19. The factum of filing of securitization application by respondent No.2 and order passed by the Tribunal were communicated to the petitioner by the first respondent vide e-mail dated 26.02.2020.

20. After narrating the events in a chronological manner, respondent No.1 stated that on failure of respondent No.2 to comply with the conditions of stay imposed by the Tribunal, first respondent issued confirmation of sale to the petitioner on 27.03.2020 by e-mail. As the petitioner did not pay the balance 75% of the sale price within 15 days of the e-mail, respondent No.1 informed the petitioner vide letter dated 29.08.2020 about forfeiture of the amount already paid. Though further time was given to make the deposit of 75%, the same was not paid. Consequently, the amount already paid by the petitioner was forfeited on 08.10.2020. Though petitioner had requested to withdraw letter dated 29.08.2020, respondent No.1 informed the petitioner on 13.10.2020 that question of such withdrawal would not arise.

21. According to respondent No.1, as respondent No.2 had complied by paying the first installment in terms of the order of the Tribunal, sale confirmation could not be issued immediately to the petitioner. However, as respondent No.2 failed to further comply with the conditional order of the Tribunal and failed to make payment of the 2nd and 3rd installments before 23.03.2020, respondent No.1 confirmed the sale in favour of the petitioner on 27.03.2020 and intimated the same to the petitioner through e-mail on 27.03.2020. Though other e-mails were received by the petitioner, strangely this e-mail dated 27.03.2020 was allegedly not received by the petitioner. It is stated that sale confirmation letter could not be sent through registered post with acknowledgement due because of the lockdown imposed by the Government on account of COVID-19 pandemic.

22. According to respondent No.1, in spite of receipt of sale confirmation letter dated 27.03.2020 and in spite of repeated requests made by respondent No.1, petitioner failed to remit the balance 75% of the sale price within time. Therefore, the 25% of the sale price deposited by the petitioner was liable to be forfeited in terms of Rule 9 of the SARFAESI Rules. Accordingly the said amount was forfeited.

23. In the circumstances it is contended that the writ petition is devoid of merit and therefore should be dismissed.

24. Petitioner has filed a reply to the counter affidavit filed by respondent No.1. After re-narrating the facts, petitioner has again asserted that he has not received the letter of

confirmation of sale dated 27.03.2020 till now. According to the petitioner in view of conditional stay granted by the Tribunal and extension thereof till 22.04.2020, respondent No.1 could not have issued the sale confirmation letter dated 27.03.2020. Even though petitioner had approached respondent No.1 on a number times for a physical copy of the letter dated 27.03.2020, the same was not furnished to the petitioner. Finally, petitioner has stated that even now he is ready to deposit 75% of the sale price within seven days of receipt of sale confirmation letter.

25. When the case was heard on 11.04.2022, we had taken a view that the differences between the parties are not so intractable that it could not be resolved. To break the stalemate, we had directed the petitioner to deposit the balance 75% of the sale price within three days; whereafter Court would consider passing appropriate order(s). Relevant portion of the order dated 11.04.2022 reads as under:

“Be that as it may, following the hearing, we are of the view that differences between the parties are not so intractable that it cannot be resolved. Therefore, to break the stalemate, we direct the petitioner to deposit the balance 75% of the sale price within three days from today. Once, this amount is deposited, Court may consider passing appropriate order(s)”.

26. When the case was taken up for hearing on 22.04.2022 Mr.C.V.Mohan Reddy, learned senior counsel appearing for the petitioner submitted that pursuant to our order dated 11.04.2022, petitioner had deposited the balance 75% of the sale price being Rs.6,88,17,750-00 on 12.04.2022. Dr.Narasimha, learned counsel for the first respondent submitted that because of the delayed payment by the petitioner, bank has suffered in monetary terms. He, therefore, sought for time to place on record the present Government value of the schedule property (Lot ‘A’) which was auction sold to the petitioner on 27.02.2020.

27. On 29.04.2022, learned counsel for the petitioner submitted two Memos on behalf of the petitioner, one dated 26.04.2022 and the other dated 28.04.2022. Likewise, learned counsel for respondent No.1 also filed a set of material papers on 28.04.2022.

28. As per Memo dated 26.04.2022 filed on behalf of the petitioner, it is stated that petitioner had deposited Rs.6,88,17,750-00 being 75% of the bid amount on 12.04.2022. Bank counterfoil of said deposit has been annexed with the Memo. In the second Memo dated 28.04.2022 filed on behalf of the petitioner, it is stated that petitioner has provided for land valuation of the schedule Lot ‘A’ property issued by the Sub- Registrar, Chandragiri. The value of Lot ‘A’ schedule property as on 24.02.2020 was Rs.13,99,000-00 per acre which would make the total value of Lot ‘A’ schedule property at Rs.1,76,97,500-00. The said revenue authority has again given valuation of the aforesaid Lot ‘A’ property as on 12.04.2022 being Rs.18,19,000-00 per acre which would make the total value of Lot ‘A’ property at Rs.2,30,10,500-00. On the above basis, Mr. C.V.Mohan Reddy, learned senior counsel for the petitioner submits that sale price of the petitioner being much higher than the estimated value of Lot ‘A’ schedule property calculated by the revenue authority even as late as 12.04.2022, there is no question of any loss being suffered by the first respondent because of the delay in payment of balance 75% of the sale price which is

purely attributable to respondent No.1.

29. On the contrary, Dr.Narasimha, learned counsel for respondent No.1 has referred to the material papers submitted on behalf of the said respondent on 28.04.2022 which includes additional counter affidavit. It is stated that pursuant to the order of this Court, petitioner has deposited an amount of Rs.6,88,17,750-00 by way of RTGS on 12.04.2022 being 75% of the balance sale consideration amount, the total being Rs.9,17,57,000-00.

29.1 It is stated that on filing of the present writ petition, petitioner had obtained interim stay dated 10.12.2020 directing the bank not to take any coercive steps. Because of such stay, the bank could not issue fresh e-auction notification of the schedule properties. For nearly 2 years bank has suffered huge loss due to the action of the petitioner. According to respondent No.1 for the delayed period towards payment of balance 75% of the sale consideration respondent No.1 bank has suffered loss on account of interest to the extent of Rs.1,01,69,421-00. Further, the valuation of the property has increased in the last two years by 30%. Therefore, value of the schedule property would be Rs.11,92,84,100-00. As a result, bank has suffered loss of about Rs.2,75,27,100-00, Rs.11,92,84,100-00 less Rs.9,17,57,000-00. Therefore, stand taken by respondent No.1 is that petitioner should now additionally pay the interest as well as the enhanced property value.

30. Upon hearing learned counsel for the parties and on thorough consideration of all aspects of the matter, we are of the view that the stand taken by respondent No.1 does not appear to be justified. We say so for the following reasons.

31. In S.A.No.37 of 2020 filed before the Tribunal by respondent No.2, Tribunal had passed a docket order on 25.02.2020 on an application filed by respondent No.2 seeking stay of all further proceedings, pursuant to the auction notice dated 22.01.2020. By the aforesaid order, Tribunal granted liberty to respondent No.1 to proceed with the auction of the schedule properties on 27.02.2020 as scheduled. But respondent No.1 was directed not to confirm the sale in favour of the highest bidder in the auction sale subject to respondent No.2 depositing 15% of the total outstanding dues in three installments. It was clarified that in case of failure of compliance of any of the above conditions by respondent No.2, interim stay would stand vacated and respondent No.1 would be at liberty to confirm the sale in favour of the highest bidder; but such sale would be subject to the result of S.A.No.37 of 2020. It has come on record that respondent No.2 could pay only the first installment and defaulted in payment of 2nd and 3rd installments. In such circumstances, respondent No.2 filed an interlocutory application before the Tribunal seeking further four weeks time for payment of the 2nd and 3rd installments in terms of the order dated 25.02.2020. The said application was registered as I.A.No.555 of 2020. By order dated 23.03.2020, the stay was extended by four weeks by the Tribunal from 23.03.2020 for payment of 2nd and 3rd installments to the credit of the bank account with respondent No.1 bank. Relevant portion of the order dated 23.03.2020 passed by the Tribunal reads as under:

"Having regard to the facts and circumstances of the case and in interest of justice, stay is extended by four weeks from today i.e. 23.03.2020 for payment of second and third installments to the credit of bank account with respondent bank."

32. Thus, the conditional stay order which was granted on 25.02.2020 was further extended by four weeks from 23.03.2020. In other words, the stay granted by the Tribunal and as extended was in force till 22.04.2020.

33. It is another matter that respondent No.2 even thereafter failed to deposit the 2nd and 3rd installments which would mean that the stay granted by the Tribunal would no longer be operative with effect from 22.04.2020 though the auction sale would be subject to outcome of S.A.No.37 of 2020.

34. If this be the position, respondent No.1 could not have issued the letter dated 27.03.2020 (prior to 22.04.2020) said to have been sent by e-mail because that would have been in contravention of the stay granted by the Tribunal, as extended. Even if issued, the same would be of no legal consequence being in violation of an order passed by a statutory Tribunal.

35. In paragraph No.3.6 of its counter affidavit respondent No.1 has stated that the sale confirmation letter could not be sent to the petitioner through registered post with acknowledgement due because of the lockdown imposed by the Government due to COVID-19 pandemic. Thus, as per the admitted version of respondent No.1 it had not sent any sale confirmation letter to the petitioner through registered post with acknowledgement due. If this is read in conjunction with what we have analysed in the preceding paragraphs, it would mean that there was no sale confirmation letter of respondent No.1.

36. We may now deal with the relevant statutory provisions under the SARFAESI Act and the SARFAESI Rules dealing with auction sale of schedule property.

37. Rule 9 of the SARFAESI Rules deals with time of sale, issue of sale certificate and delivery of possession etc. As per Sub-Rule (3), at every sale of immovable property, the purchaser shall immediately i.e. on the same day or not later than the next working day, as the case may be, pay a deposit of 25% of the amount of the sale price which would be inclusive of the EMD. If this is not paid, the property shall be sold again. Sub-Rule (4) says that the balance amount of purchase price shall be paid by the purchaser to the authorized officer on or before the 15th day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor; but such extended period should not exceed three months. As per Sub-Rule (5), if there is default of payment in terms of Sub-Rule (4), the deposit shall be forfeited and the property shall be resold.

38. From an analysis of Sub-Rule (4) of Rule 9, what is evident is that payment of balance amount of 75% of the sale price by the purchaser to the authorized officer of the secured creditor should be made within 15 days of confirmation of sale of the immovable property. According to respondent No.1 it could not issue sale confirmation letter because of stay order passed by the Tribunal on 25.02.2020. If this is the position, it could not have issued the sale confirmation on 27.03.2020 as is being contended as the stay order granted on 25.02.2020 was extended by the Tribunal vide the order dated 23.03.2020 for a further

period of four weeks with effect from 23.03.2020 i.e., till 22.04.2020. In other words, respondent No.1 could not have issued sale confirmation letter on 27.03.2020 when the stay was in force. That apart, we do not find any exercise undertaken by respondent No.1 to extend the period for deposit of the balance amount which is permissible up to three months.

39. That apart, this Court while issuing notice on 10.12.2020, had granted interim stay which order continues to operate till date. It is settled proposition that an order of the Court should cause prejudice to none. In view of the stay granted by this Court on 10.12.2020, which continues till today, no blame can be laid at the door of the petitioner that because of the stay order passed by this Court, the bank has suffered loss in terms of interest or enhanced value of the land and therefore it should be compensated. Such a stand taken by respondent No.1, which is a public sector undertaking, cannot be appreciated. As we have indicated in our order dated 11.04.2022, the issue involved in this case is a small one which could have been easily resolved without the intervention of the Court.

40. We may remind ourselves and also respondent No.1 that when it had allegedly issued sale confirmation letter dated 27.03.2020 (which according to us could not have been issued and was not issued) there was complete lockdown in the country in view of COVID-19 pandemic. To expect the petitioner to pay the balance 75% of the sale amount within the lockdown period and thereafter to take an adverse view for non-payment would not at all be justified. We are assured and convinced of the bona fides of the petitioner after it deposited the balance 75% of the sale price on 12.04.2022 i.e. within a day after we had passed our order on 11.04.2022.

41. That being the position, we are inclined to accept the prayer made by the petitioner. Petitioner cannot be burdened with additional interest or payment of any further amount for the reasons which we have already indicated above.

42. Consequently, respondent No.1 is directed to issue sale certificate in respect of Lot 'A' schedule property to the petitioner within 15 days from the date of receipt of a copy of this order and thereafter take all necessary steps for getting the sale registered before the registering authority.

43. This disposes of the writ petition. However, there shall be no order as to costs.

44. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.