PLRonline

2018 PLRONLINE 1309 (SC)
[ID# 1310103]

SUPREME COURT OF INDIA

Before: Justice Arun Mishra and Justice Uday Umesh Lalit.

RAKESH BIRANI (D) Through Lrs. - Appellants

Versus

PREM NARAIN SEHGAL & Anr. – Respondents

Civil Appeal No. 3156 of 2018 (Arising out of SLP (C) No.7626 of 2017).

21.3.2018.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Security Interest (Enforcement) Rules, 2002, Rule 9 - Auction sale - Confirmation of - Under Rule 9(2), the sale is required to be confirmed in favour of the purchaser who has offered the highest sale price to the authorised officer and shall be subject to confirmation by the secured creditor - Rule 9(1) does not deal with the confirmation by the authorised officer - It only provides confirmation by the secured creditor - There cannot be any forfeiture of the amount of 25 percent in deposit until and unless the sale is confirmed by the secured creditor and there is a default of payment of 75 percent of the amount. [Para 8]

For the Appellants :- Manohar Pratap, Raja V. Naik, Ms. Manju Jetley, Advocates.

For the Respondents :- Satyajit A Desai, Vikram D. Chauhan, Rajesh Lalwali, Ms.Anagha S. Desai, Rajesh Kumar-I, Gaurav Kumar Singh, Anant Gautam, Aakash Sehrawat, V.Govinda Ramanan, Soumu Palit, Advocates.

ORDER

Leave granted.

2. The auction purchaser has come up in this appeal against the judgment and order passed by the Division Bench of the High Court affirming the judgment passed by the Single Bench.

3. The brief facts in the present case are that the auction of the property was held on 14th February 2013. The appellant was the highest bidder. He offered a bid of L 38.30 lakhs and deposited a sum of L 3,90,500/- as earnest money on 1st February 2013. He further deposited 25% of the auction amount of L 5.80/- lakhs on 15th February 2013 and remaining amount of L 8,69,500/- on 13th March 2013. The auction purchaser claimed that he was intimated regarding confirmation of sale by the Authorised Officer of the secured creditor by letter dated 27th February 2013. As soon as he was intimated of the confirmation, he further deposited the 75% of the auction amount on 13th March 2013 within 15 days of confirmation of sale.

4. The owner and principal borrower whose property was sold in auction questioned the same by way of filing a writ petition. The Writ Petition (Civil) No.20653 of 2013 was filed by the respondent. The Division Bench passed the order on 25th April 2013 that as the property has already been auctioned, directed the respondent to file an appeal under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act of 2002"). Thereafter, an appeal was filed that was registered as S.A. No.1133 of 2013. The Debts Recovery Tribunal, Allahabad vide order dated 19th December 2013, has set aside the sale, the order was confirmed by the Debts Recovery Appellate Tribunal as well as by the Single Judge and the Division Bench of the High Court. Hence, the present appeal by the auction purchaser.

5. The main question that arises for our consideration in the appeal is, from which date the period of fifteen days would start for making the deposit of remaining 75 percent;

from the date of communication of confirmation of sale or from the date of the auction. The aforesaid dates are not in dispute. The decision depends upon the interpretation of Rule 9 of Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules). Rule 9 of the 2002 Rules reads as under:

> *"9. Time of sale, issues of sale certificate and delivery of possession, etc.-*
>
> *(1) No sale of immovable property under these rules, in the first instance, shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:*
>
> *Provided further that if the sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.*
>
> *(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer shall be subject to confirmation by the secured creditor:*
>
> *Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.*
>
> *(3) On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty five percent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again.*
>
> *(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of the sale of the immovable property or such extended period (as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months).*
>
> *(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited (to the secured creditor) and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for such it may be subsequently sold.*
>
> *(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.*
>
> *(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:*
>
> *(Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid*

a b c e f g h i j k l m

to the purchaser within fifteen days from the date of finalisation of the sale.)

(8) On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchase fee from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

6. The submission raised by learned counsel appearing on behalf of the appellant was that Rule 9(4) of the 2002 Rules provided that the amount has to be deposited only after confirmation. Rule 9(2) also contemplates confirmation of the bid. Learned counsel has also taken us through Rule 9(5) so as to contend that in default of the payment within the period mentioned in sub-rule (4), the deposit made shall be forfeited. The forfeiture is only to follow as consequence of non-deposit of 75 percent of amount after confirmation of sale. Learned counsel has also relied upon the provisions of Rule 9(6) to submit that after confirmation of sale, in case, terms of sale have been complied with only then sale certificate is issued. In this case, sale certificate has been issued by the owner in favour of the auction purchaser. Thus, the High Court has erred in law in interpreting the rule 9 of the rules of 2002 to mean that date of the auction is also the date of its confirmation.

7. On the other hand, learned counsel appearing on behalf of the borrower-respondent No.1 contends that it is apparent from Rule 9(2) that there is confirmation of sale as soon as highest bid is accepted by the authorised officer, within fifteen days, the deposit of 75% of the amount is to be made, failing which the only course is the forfeiture of the remaining 25% of the amount that has been deposited and the property has to be resold.

8. In order to comprehend the rival submissions, it is necessary to ponder as to intendment of Rule 9 of the 2002 Rules which deals with the time of sale, issues of sale certificate and delivery of possession, etc. Public notice of sale is to be published in the newspaper and only after thirty days thereafter, the sale of immovable property can take place. Under Rule 9(2) of the 2002 Rules, the sale is required to be confirmed in favour of the purchaser who has offered the highest sale price to the authorised officer and shall be subject to confirmation by the secured creditor. The proviso makes it clear that sale under the said Rule would be confirmed if the amount offered and the whole price is not less than the reserved price as specified in Rule 9(5). It is apparent that Rule 9(1) does not deal with the confirmation by the authorised officer. It only provides confirmation by the secured creditor. Rule 9(3) makes it clear that on every sale of immovable property, the purchaser on the same day or not later than next working day, has to make a deposit of twenty-five percent of the amount of the sale price, which is inclusive of earnest money deposited if any. Rule 9(4) makes it clear that balance amount of the purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth 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. Thus, Rule 9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited. Rule 9(3) also makes it clear that period of fifteen days has to be computed from the date of confirmation. In this case, confirmation has been made and

communicated on 27th February 2013 and within fifteen days thereof i.e. on 13th March 2018, the amount of twenty-five percent had been deposited. Thereafter, sale certificate has been issued under Rule 9(6). Rule 9(5) also makes it clear that in default of payment within the period mentioned in sub-rule 9(4), the deposit shall be forfeited. There cannot be any forfeiture of the amount of 25 percent in deposit until and unless the sale is confirmed by the secured creditor and there is a default of payment of 75 percent of the amount. The interpretation made by the High Court thus cannot be accepted.

9. If we read the provisions otherwise then we find even before the confirmation of sale within fifteen days, the amount would be forfeited by the authorised officer who may decide not to confirm the sale that would be a result not contemplated in Rule 9(2), 9(4) and 9(5) which fortify our conclusion that it is only after the confirmation is made under Rule 9(4) that amount has to be deposited and on failure to deposit the amount, twenty-five percent amount has to be forfeited and property has to be resold. The provisions of Rule 9(6) also fortifies our conclusion, inasmuch as it is the expression used that on confirmation of sale by the secured creditor and "if the term of payment has been complied with" sale certificate is issued otherwise the forfeiture takes place, this compliance has to be only after the confirmation of sale and not before it. Thus, various provisions of Rule 9 makes it clear that interpretation made by Debts Recovery Tribunal and Debts Recovery Appellate Tribunal and as affirmed by the High Court cannot be said to be correct.

10. Thus, we find that the provisions had been fully complied with by the auction purchaser as he has complied with the provisions of Rule 9 by making a deposit of 75 percent of the amount from the rate of confirmation of sale. The sale certificate was rightly issued in favour of auction purchaser. Thus, the auction could not have been set aside. Since the sale certificate has been issued, let the possession be delivered in accordance with law, as expeditiously as possible.

11. The appeal is allowed and the impugned orders are set aside. No order as to costs.