

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NOs.28320 AND 28947 OF 2018

WRIT PETITION No.28320 of 2018:

Between:

M/S Vinayak steels Limited
having its Registered Office at 5-4-83 to 85,
TSK Chambers, M G Road, Secunderabad,
Rep by its Director Vineet Kedia,
S/o Sri Vinod Kedia, aged about 32 years,
Occ Business, R/o Secunderabad.

..... Petitioner

and

M/S OM VISHNU PIPES PVT LTD,
M/s Om Vishnu Pipes Pvt Ltd,
Rep. by its Managing Director,
Sri Ramesh Kishandas Asrani,
R/o 184, MG Road, Secunderabad
and another

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 02.03.2023

HON'BLE SRI JUSTICE P.NAVEEN RAO

&

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

1. Whether Reporters of Local Newspapers : **Yes**
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

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Vs.

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M/s Om Vishnu Pipes Pvt Ltd,
Rep. by its Managing Director,
Sri Ramesh Kishandas Asrani,
R/o 184, MG Road, Secunderabad
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.....Respondents

!Counsel for the petitioners : Sri VV Ramana in W.P.No.28320/2018
Sri Ch.Prabhakar in W.P.No.28947/2018

Counsel for the Respondents: Sri Zeeshan Adnan Mahmood
Sri Ch.Prabhakar

<Gist :

>Head Note:

? Cases referred:

2022 LiveLaw (SC) 967; 2022 LiveLaw (SC) 545; 2018 (4) ALD 322 (DB);(2017) 4 SCC 735
MANU/HY/0421/2018; (2014) 5 SCC 610; (2017) 4 SCC 735; 2018 SCC OnLine Hyd 178;
WP Nos. 25174 and 34129 of 2018 dt 8.1.2020; 2018 SCC OnLineHyd 783

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NOs.28320 AND 28947 OF 2018

COMMON ORDER: *(Per Hon'ble Sri Justice P.Naveen Rao)*

These two writ petitions are filed challenging the order of Debts Recovery Tribunal-II at Hyderabad (for short 'the Tribunal') dated 10.07.2018 passed in S.A.No.32 of 2017.

2. Briefly noted, to the extent relevant, the facts are as under:

The 1st respondent borrowed money from the State Bank of India who is the petitioner in W.P.No.28947 of 2018. Holding that the borrower defaulted in repayment of loan, the Bank declared the said loan account as Non-Performing Asset and has taken recourse to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). At the time of obtaining loan, the borrower mortgaged certain properties as security. Since the amount due was not repaid by the borrower, the Bank has issued notice dated 23.09.2016 under Rule 8(6) of the Security Interest (Enforcement) Rules (for brevity 'the Rules') informing the borrower that the secured asset would be sold to recover the amounts due, if the amount due is not repaid by him. On 23.10.2016 a notice under Rule 9(1) of the Rules was issued proposing to conduct sale of the secured asset on 30.11.2016. However, the sale

was not successful. A second notice was issued on 23.12.2016 fixing the date of auction as 18.01.2017. Second time also the Bank was unsuccessful in disposing of the property. A third sale notice was issued on 12.02.2017 proposing to conduct sale on 28.02.2017. This time, sale was successful and petitioner in W.P.No.28320 of 2018 stood as auction purchaser for an amount of ₹ 3,81,00,000/- and on 22.03.2017 sale certificate was issued.

2.1. The borrower filed W.P.No.1978 of 2016 praying to set aside the possession notice dated 06.01.2016 and to set aside any other proceedings of the respondent-Bank. This Court by order dated 25.01.2016 granted stay of all further proceedings subject to the condition of petitioner depositing an amount of ₹ 2.50 Crores in two installments; the first installment of ₹ 1.25 Crores to be paid within a period of six weeks from that date and second instalment of Rs.1.25 Crores to be paid within further period of six weeks thereafter. It appears, said condition was not complied with by the borrower and later, the writ petition was withdrawn and the borrower went before the Tribunal.

2.2. The borrower filed S.A.No.246 of 2016 which was re-numbered as S.A.No.32 of 2017, challenging the possession notice. In the said S.A., borrower filed I.A.No.300 of 2017 praying to stay all further proceedings including taking physical possession, issuance of sale certificate in respect of sale of petition schedule property. On 14.03.2017 the

Tribunal passed a conditional order staying further proceedings including taking physical possession and issuance of sale certificate in favour of highest bidder in the auction sale of petition schedule property conducted on 28.02.2017, subject to borrower depositing 30% of the total outstanding dues in two equal installments; the first installment of 15% to be deposited within one week from the date of the order and the second installment of 15% of amount within two weeks thereafter. It appears, the borrower has not complied with the said condition and no amount was deposited. Therefore, the interim order granted by the Tribunal was inoperative.

2.3. In the said S.A., borrower filed application to amend the prayer sought in the S.A., and by way of an amendment the borrower challenged the legality and validity of the sale certificate.

3. The Tribunal formulated two points for consideration :

“1. Whether the applicant made out any valid ground for quashing the possession notice dated 06.01.2016 ?

2. Whether the applicant made out any valid ground for quashing the auction held on 28.02.2017 ? ”

4. On the first point, the Tribunal held in favour of the Bank holding that there was no procedural irregularity in taking possession. On point No.2, the Tribunal held that as required by Rule 8(6) read with Rule 9(1), 30 days notice period was not maintained while issuing second and third notices and therefore, the sale conducted on

28.02.2017 in pursuant to the sale notice dated 12.02.2017 is not valid in law and is vitiated the mandatory requirement of observing 30 days gap between the notice of sale and conducting of auction. Challenging the same, the successful auction purchaser and the Bank are before this Court in these two writ petitions.

5. The parties are referred to hereinafter as borrower, Bank and the auction purchaser respectively. We have heard learned counsel for the borrower, learned Senior Counsel appearing for the State Bank of India and Sri V.V.Ramana learned counsel appearing for the auction purchaser.

6. Learned counsel for the borrower made the following submissions:

6.1. Against the order of Tribunal, in an application filed under Section 17 of the SARFAESI Act, an aggrieved party has a remedy in the form of appeal before the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act. As consistently held by the Hon'ble Supreme Court and this Court, the remedy under Section 18 of the SARFAESI Act is an effective and efficacious remedy and when an aggrieved person has an effective and efficacious remedy available under the statute, the writ petition is not maintainable and the writ Court ought not to entertain the Writ Petition.

6.2. In support of his contention, learned counsel relied upon the decision in **Varimadugu Obi Reddy Vs B.Sreenivasulu & Others¹ (Civil Appeal No(s). 8470 of 2022)** and **Kotak Mahindra Bank Limited Vs Dilip Bhosale² (Special Leave to Appeal (C) No(s). 13241-13242/2019 dated 11.05.2022)**.

6.3. He further contended that the Bank has not followed procedure as required by the SARFAESI Act and the Rules made there under. According to learned counsel, under Rule 8(6) of the Rules, notice was issued on 23.09.2016, whereas the valuation report was obtained on 17.10.2016. As required by Rule 8(5), valuation report has to be obtained prior to issuance of notice under Rule 8(6) and therefore, the procedure followed is contrary to the statutory requirement. He further contended that valuation report is not considered while putting the property for sale. The original valuation is reduced by ₹ 50 Lakhs in the first sale notice and another ₹ 50 Lakhs in the second and third sale notices. The Bank could not have reduced the valuation price and fix base price less than the price mentioned in valuation report causing huge loss to the borrower and the entire procedure is vitiated on that ground. As held by the Division Bench of this Court in **Venshiv Pharma Chem (P) Ltd., and another Vs State Bank of India³**, the Bank cannot take the valuation made long ago and based on such valuation, conduct sale after more than four months of the valuation and the Bank ought

¹ 2022 LiveLaw (SC) 967

² 2022 LiveLaw (SC) 545

³ 2018 (4) ALD 322 (DB)

to have obtained fresh valuation report before proceeding to conduct sale.

6.4. Learned counsel further contended that while issuing second and third notices, mandatory requirement of 30 days gap between the date of notice and conducting of sale is not maintained and therefore, sale is vitiated on that ground alone. According to learned counsel Rule 8(6) notice was issued prior to amendment carried out in the SARFAESI Act and the Rules in the year 2016. As the process was set in motion under the pre-amended provisions, the provision as applicable at the time of issuing first notice alone should be looked into. That being so, the proviso appended to Rule 9(1), which was introduced by way of amendment in the year 2016, is not applicable to the case on hand and therefore, the 30 days gap is mandatory and as the sale conducted on 28.02.2017 was not preceded by 30 days notice, sale is vitiated on that ground alone.

6.5. Learned counsel therefore submitted that having regard to the peculiar facts of this case, the decision of the Tribunal is just and equitable and do not call for interference.

7. Learned standing counsel for the Bank made the following submissions:

7.1. Learned Senior Counsel appearing for the Bank would submit that as held by the Hon'ble Supreme Court in **Canara Bank Vs**

M.Amarender Reddy and Others⁴ and also by the Division Bench of this Court in **Concern Readymix and Others Vs The Authorised Officer, Corporation Bank and Others**⁵, once 30 days gap was observed when the first notice was issued on failure of conducting auction on the date fixed in the first notice, the subsequent notice need not observe gap of 30 days and therefore, the sale conducted on 28.02.2017 is valid.

7.2. According to learned senior counsel, by the time, the second and third notices were issued and sale was conducted, amended provisions came into force and the amended provisions were applicable when sale was conducted and in terms of amended Rule 9(1), 15 days time is sufficient.

7.3. He would further submit that the borrower failed to comply with the directions issued by this Court in W.P.No.1978 of 2016 and the interim directions issued by the Tribunal in the very same S.A. Therefore, confirmation of sale was not interfered with at that stage.

7.4. After deducting the sale amount secured by the Bank, borrower was due to an extent of ₹ 1,31,18,342/-. At that stage, the Bank extended One Time Settlement proposal by offering to close the account, if the borrower agrees to pay an amount of ₹ 14,39,792/-. The borrower has agreed to pay the amount; the amount was paid and accordingly, the loan account was closed. By the time the OTS offer

⁴ (2017) 4 SCC 735

⁵ MANU/HY/0421/2018

was made and the amount was paid, the borrower was aware of the sale transaction conducted and having regard to his decision to opt for OTS to close the loan account, it is deemed that the borrower has accepted the sale transaction. That being so, it is no more open to the borrower to turn around and challenge the auction notice.

8. He would further submit that though the Bank has got remedy in the form of appeal at the relevant point of time, the Appellate Tribunal was not functioning. Therefore, these writ petitions were filed. He would submit that at any rate, what is urged before this Court is on the legal aspects, no evidence is required to be lead and on the face of the order of the Tribunal, the same is not sustainable. Therefore, at this stage, the Bank and the auction purchaser need not be relegated to avail the remedy of appeal. He would submit that with reference to the procedural aspect, the Tribunal has held that Bank has followed required procedure and the order of the Tribunal has become final as the borrower has not assailed the findings recorded by the Tribunal. Furthermore, the borrower has not raised other pleas before the Tribunal as is now urged before this Court and it is no more permissible for him to raise such pleas in the writ petition.

9. According to learned Senior Counsel as the first auction failed, the Bank was compelled to reduce the base price by ₹ 50 Lakhs and again the second sale was also unsuccessful, Bank was compelled to reduce by another ₹ 50 Lakhs. There are internal guidelines and

circular instructions dealing with the aspect of reduction of base price. Committee of Officers deals with these aspects. Based on the decision of the Committee of officers only, the base price was reduced. He would therefore justify the action of the Bank in reducing the base price.

10. Learned counsel Sri V.V.Ramana appearing for the auction purchaser while adopting the submissions made by learned Senior Counsel appearing for the Bank further contends that as sale certificate was issued and as the property was in dilapidated condition, entire property was demolished and new construction was made by clearing property tax dues and at this stage, if the auction sale is held to be illegal grave prejudice would be caused to the auction purchaser, which is not just and equitable.

11. Learned counsel for borrower raised plea of maintainability of writ petitions contending that Section 18 of the Act, 2002 provides remedy of appeal before DRAT against decisions of the DRT under Section 17. Said remedy is effective and efficacious.

12. Ordinarily, we would have accepted the plea to avail alternative remedy of appeal under Section 18 of the Act and relegated the petitioners to avail the remedy of appeal. However, the main issue in the writ petitions is whether 30 days gap has to be maintained while issuing second or subsequent sale notices. This issue is no more *res-integra*. Having regard to the issue involved and that the Writ

Petitions are pending for about five years, we deem it proper to decide the issues raised in the Writ Petitions instead of relegating the parties to the remedy of appeal.

13. The issue for consideration is on failure to hold auction on the first attempt whether the secured creditor is required to give 30 days notice to conduct auction on second and subsequent attempts also ?

14. It is appropriate to note the timeline on auction. Initial notice under Rule 8(6) was issued on 23.09.2016 and notice under Rule 9(1) was issued on 23.10.2016 proposing to conduct auction on 30.11.2016. As auction was not successful, second notice under Rule 9(1) was issued on 23.12.2016 fixing the date of auction as 18.01.2017. Second time also, Bank was unsuccessful. Therefore, third sale notice dated 02.02.2017 was issued under Rule 8(6) and notice under Rule 9(1) was issued on 10.02.2017 proposing to conduct sale on 28.02.2017. On the said date, auction was successful. When first notice was issued 30 days gap was maintained between Rule 8 (6) notice and Rule 9 (1) notice with further 30 days after Rule 9 (1) notice in the second and third auctions only 15 days gap was maintained between notice under Rule 9 (1) and the date of auction.

15. It is necessary to notice the statutory scheme and the law on the subject. Section 13⁶ of the Act, 2002 and Rules 8⁷ and 9⁸ of the Rules, 2002 are relevant provisions.

16. Rule 8(6) was amended vide GSR No.1040(E) dated 17.10.2018 and came into effect on 18.10.2018. By this amendment, proviso is appended to Rule 8(6). Rule 9(1) was amended vide GSR No.1046(E) dated 03.11.2016 and came into effect on 04.11.2016. Section 13(8)

⁶ **S.13.** No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

⁷ **Rule 8. Sale of immovable secured assets.—**

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:—

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,—

(a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) 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.

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Rule 9. Time of sale, issues of sale certificate and delivery of possession, etc.—

(1) No sale of immovable property under these rules 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) or notice of sale has been served to the borrower.

(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 and shall be subject to confirmation by the secured creditor: Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9: 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 pay a deposit of twenty-five per cent. of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith 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 sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited 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 which 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.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may 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 purchaser free 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.

was amended by Amendment Act, 44 of 2016. The amendment to Section 13(8) came into effect on 01.09.2016. The unamended and amended provisions read as under.

Prior to amendment	After amendment
<p>S.13. Enforcement of security interest: Sub-section (8): If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secure asset.</p>	<p>S.13. Enforcement of security interest: Sub-section (8): Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured asset,-- (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.</p>
<p>Rule 8. Sale of immovable secured assets.- Sub-Rule (6). The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):</p>	<p>Rule 8. Sale of immovable secured assets.- Sub-Rule (6). The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5): Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.</p>
<p>Rule 9. Time of sale, issue of Sale Certificate and delivery of possession, etc.- Sub-rule (1). No sale of immovable property under these rules 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) or notice of sale has been served to the borrower.</p>	<p>Rule 9. Time of sale, issue of Sale Certificate and delivery of possession, etc.- Sub-rule (1). No sale of immovable property under these rules, in 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 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 authorized officer shall serve, affix and public notice of sale of not less than fifteen days to the borrower, for any subsequent sale.</p>

17. From the reading of these provisions, it is apparent that by amendment to Rule 9(1) the requirement to maintain 30 days gap between notice under Rule 8(6) and Rule 9(1) is dispensed with and for

second and subsequent notices of sale under Rule 9(1) , it is sufficient if 15 days time is maintained from the date of issuing notice under Rule 9(1) and the date of auction. In the cases on hand, the first notice maintained 30 days gap and second and third notices maintained 15 days gap. The second and third notices were issued after Rule 9(1) was amended.

18. The scope of these provisions was considered in the following decisions:

18.1. In **Mathew Varghese Vs M.Amrita Kumar**⁹, Hon'ble Supreme Court elaborately considered scope of Section 13 of the Act, 2002 and Rules 8 and 9 of the Rules, 2002. The relevant paragraphs read as under:

“2. The interesting but very serious question that arises for consideration in this appeal is as regards the interpretation of Section 13(8) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “the 2002 Rules”).

27. A reading of Section 13(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.

29.1. A plain reading of sub-section (8) would show that a borrower can tender to the secured creditor the dues together with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in the said provision, the mandate is that the secured asset should not be sold or transferred by the secured creditor. It is further reinforced to the effect that no further step should also be taken by the secured creditor for transfer or sale of the secured asset. The contingency stipulated in the event of the tender being made by a debtor of the dues inclusive of the costs, charges, etc., would be that such tender being made before the date fixed for sale or transfer, the secured creditor

⁹ (2014) 5 SCC 610

should stop all further steps for effecting the sale or transfer. That apart, no further step should also be taken for transfer or sale.

29.2. When we analyse in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognised and asserted in favour of the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a constitutional right protected under Article 300-A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

29.3. Therefore, dehors the extent of borrowing made and whatever costs, charges were incurred by the secured creditor in respect of such borrowings, when it comes to the question of realising the dues by bringing the property entrusted with the secured creditor for sale to realise money advanced without approaching any court or tribunal, the secured creditor as a TRUSTEE cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFAESI Act.

29.4. 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 or at least ensure that in the process of sale the secured asset derives the maximum benefit and the secured creditor or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act. More so, under Section 13(1) of the SARFAESI Act, the secured creditor is given a free hand to resort to sale of the property without approaching the court or Tribunal.

30. 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.

31. Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the Rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorised officer should serve to

the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days' clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act.

33. Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1). In our considered opinion, it has got a twin objective to be achieved:

33.1. In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time.

33.2. Secondly, when such a secured asset of an immovable property is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since, the proviso to sub-rule (6) also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question.

33.3. Be that as it may, the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed.

35. Therefore, a reading of Rules 8 and 9, in particular, sub-rules (1) to (4) and (6) of Rule 8 and sub-rule (1) of Rule 9 makes it clear that simply because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset in the event of the same having become a non-performing asset cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a

casual manner or by not adhering to the prescriptions contained under the SARFAESI Act and the abovesaid Rules mentioned by us.

39. When we apply the above principles stated with reference to Section 60 of the TP Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the TP Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above stated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act.

41. Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of.

53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8

read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Sections 13(1) and (8) of the said Act.”

18.2. In **Canara Bank Vs. M.Amarender Reddy**¹⁰ also Hon’ble Supreme Court elaborately considered scope of various provisions of the Act and the rules and the decision in **Mathew Varghese** (supra). Hon’ble Supreme Court held:

“13. In the impugned judgment [*M. Amarender Reddy v. Canara Bank*, 2016 SCC OnLine Hyd 421] , we find that the High Court has quoted or relied upon sub-rule (6) of Rule 8 as dealing with “movable” secured assets. This is incorrect. For, the correct version of Rule 8(6) refers to “immovable” secured assets and not movable, as noted by the High Court. Be that as it may, there is no difficulty in accepting the observation of the High Court that possession notice is distinct from the notice for sale of the secured asset. In that, possession notice is required to be given in terms of Rule 8(1) read with Rule 8(2). Whereas, a notice of intention of sale is required to be given to the borrower in terms of Rule 9(1) read with Rule 8(6) of the said Rules. This is to give intimation to the borrower about the proposed date of sale to be held after the statutory period of thirty days. Further, in case of sale of the secured assets either by inviting tenders from the public or by holding public auction being the mode permitted by sub-rule (5) of Rule 8, the secured creditor is required to give a public notice in two leading newspapers in terms of the proviso in sub-rule (6) of Rule 8. Such public notice, however, may not be necessary in case of sale of a secured asset if it is by way of the other modes specified in clause (a) or (d) of sub-rule (5) of Rule 8, to wit, by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such asset; or by private treaty.

14. The secured creditor, after it decides to proceed with the sale of secured asset consequent to taking over possession (symbolic or physical as the case may be), is no doubt required to give a notice of 30 days for sale of the immovable asset as per sub-rule (6) of Rule 8. However, there is nothing in the Rules, either express or implied, to take the view that a public notice under sub-rule (6) of Rule 8 must be issued only after the expiry of 30 days from issuance of individual notice by the authorised officer to the borrower about the intention to sell the immovable secured asset. In other words, it is permissible to simultaneously issue notice to the borrower about the intention to sell the secured assets and also to issue a public notice for sale of such secured asset by inviting tenders from the public or by holding public auction. The only restriction is to give thirty days' time gap between such notice and the date of sale of the immovable secured asset.

15. We hold that the High Court has committed a manifest error in assuming that the notice of intention of sale to be given to the borrower and a public notice for sale cannot be simultaneously issued. The High Court was also not right in observing that after a notice regarding intention to sell the secured

¹⁰ (2017) 4 SCC 735

asset under sub-rule (6) of Rule 8 is given by the authorised officer to the borrower, only on expiry of 30 days therefrom can the secured creditor take a decision about the mode of sale referred to in sub-rule (5) of Rule 8 after giving notice to the borrower and then issue a public notice after expiry of further thirty days. By this interpretation, the High Court has virtually re-written the provisions and inevitably extended the time-frame of 30 days specified in sub-rule (6) of Rule 8 (at least in relation to the sale of secured asset by inviting tenders from the public or by holding public auction).

16. To put it differently, the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding public auction, notifying the date of sale after 30 clear days from such notice. There is no need to wait for the expiry of 30 days from issuance of notice of intention to sell the secured asset given to the borrower, for publication of a public notice for sale of such asset. Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset. To the above extent, the opinion of the High Court in the impugned judgment will have to be overturned.”

18.3. In **Sri Sai Annadhatha Polymers and another Vs The Canara Bank, rep. by its Branch Manager, Madanapalle**¹¹, the sale notice dated 01.03.2018 was issued under Rule 8(6) and a notice under Rule 9 was also issued bearing the same date fixing the date of auction on 03.04.2018. Notice under Rule 9 was published in the local newspapers on 03.03.2018. Relevant paragraphs of the judgment read as under:

“15. It is true that the petitioners did not make any specific allegation in their writ affidavit in relation to violation of the mandatory provisions of the Rules of 2002 and more particularly, Rules 8(6) and 9(1) thereof in the context of the amended Section 13(8) of the SARFAESI Act. However, when a scheduled bank seeks to exercise the extraordinary and far-reaching power vesting in it under the provisions of the SARFAESI Act and the Rules framed thereunder, it must necessarily abide by and obey the due procedure prescribed thereunder. This Court, being the sentinel on the qui vive, would be quick to react in the event a secured creditor, such as the bank, seeks to exercise such power in violation of the mandatory procedure. Be it noted that a secured creditor, by virtue of the powers created by and vesting in it under the SARFAESI Act, is empowered to dispense with the ordinary legal process of taking recourse to the competent civil Court for foreclosure and unilaterally bring the secured/mortgaged assets to sale by simply adhering to the procedure prescribed thereunder. In the event a secured creditor fails to follow such binding procedure, it would adversely impact the borrowers right to property under Article 300A of the Constitution. Therefore, notwithstanding the fact that the writ petitioners did not specifically raise a ground in this regard, this Court is entitled, nay, bound to examine as to whether the bank followed the due procedure while issuing the notices in question. Merely because sufficient pleading is not put forth is no ground for a Constitutional Court to condone or turn a blind eye to patent illegality.

¹¹ 2018 SCC OnLine Hyd 178

20. In the light of the aforesaid changes in the statutory scheme, certain crucial aspects may be noted. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Case law consistently held to the effect that a sale or transfer is not completed until all the formalities are completed and there is an effective transfer of the asset sold. In consequence, the borrowers right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. The recent judgment of the Supreme Court in *ITC LIMITED v. BLUE COAST HOTELS LIMITED* also affirmed this legal position.

21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. However, it is significant to note that Rule 8(6) of the Rules of 2002 still continues to remain the same and thereunder, the authorized officer of the secured creditor must necessarily serve upon the borrower a notice of thirty days for sale of the immovable secured asset taking recourse to one of the options available under Rule 8(5) thereof.

23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post-amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in *CANARA BANK v. M. AMARENDER REDDY*, which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in *MATHEW VARGHESE*, stands extinguished upon publication of the sale notice under Rule 9(1)."

18.4. In **M/s Aditya Industries Vs Vijaya Bank Assets Recovery and Management Branch**¹² decided on 8.1.2020 this issue was considered by another Division Bench of this Court. In the said case e-auction sale notice was issued on 8.6.2018. Thereafter, sale notice was issued on 11.6.2018 served on the petitioner on 13.6.2018 proposing to conduct

¹² WP Nos. 25174 and 34129 of 2018 dt 8.1.2020

sale on 20.7.2018. It was contended that thirty (30) days gap was not maintained between notice under Rule 8 (6) and notice under Rule 9 (1) of the Rules and the sale conducted on 20.7.2018 is vitiated on that ground. In support of the said contention, reliance was placed on the decision in **Sri Sai Annadhatha Polymers**. Considering the said submissions, Hon'ble Division Bench held that the decision in **Sri Sai Annadhatha Polymers** does not represent correct legal position. The Division Bench held that it would suffice if there is 30 days gap from the date of publication of public notice of sale in newspapers and the date of sale. The Division Bench held:

“19. We are of the opinion that the basis for the said view of the Division Bench in that case was that Rule 8(6) of the Rules was not amended though Section 13(8) of the Act was amended. In our opinion, the unamended Section 13(8) created a right vested in the borrower to redeem all the dues at any time before the date fixed for sale or transfer. After the amendment made to Sec.13(8) on 01.09.2016, the borrower could redeem the property mortgaged to prevent its sale if he paid all the dues before the date of publication of the notice for public auction or inviting quotations.

20. Thus, the time available to a borrower to redeem the property was reduced. Rule 9(1) of the Rules was also amended. Prior to its amendment, it stated that there shall not be sale of immovable property under the Rules before the expiry of 30 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) or notice of sale has been served to the borrower. But after its amendment, a proviso has been added stating that if there is any failure in conducting sale in the first attempt and it is required to conduct a sale again, the period of 30 days mentioned in sub-rule (1) of Rule 9 of the Rules would stand reduced to 15 days.

21. Merely because Rule 8(6) of the Rules, which stated that the authorized officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets under sub-rule (5), was not altered, it would not, in our opinion, make any difference.

22. In our opinion, the statute nowhere requires that there should be a 30 day gap between service of notice by the authorized officer on the borrower and the date fixed for sale of the immovable secured assets. We hold that the contrary view taken **Sri Sai Annadhatha Polymers, Madanapalle, Chittoor District** does not represent the correct legal position.

23. There need not be a clear 30 day notice period between issuance of notice under Rule 8(6) and issuance of notice under Rule 9(1) of the Rules. It would suffice if there is 30 day gap from the date of publication of public notice in newspapers of sale and the date of sale.”

18.5. In **Concern Readymix v. Corporation Bank**¹³, Writ petitioner had taken a term loan for the establishment of Readymix concrete unit in

¹³ 2018 SCC OnLineHyd 783

May 2011. The account was declared as NPA on 31.10.2016 due to the default by the 1st petitioner. Sale notice under Rule 8(6) as well as under Rule 9(1) was issued on 10.07.2017. Efforts to conduct auction failed on seven times and finally on 19.01.2018 Auction proceedings were successful and the 2nd respondent became the successful bidder. The petitioners approached the DRT under section 17 challenging the auction sale notice. One of the primary contentions of the parties was that after the amendment to Section 13(8) of the SARFAESI Act, 2002, , the Authorized Officer was required to give 30 day's time from the date of issue of notice under Rule 8(6) before the issue of the sale notice under Rule 9(1), whereas the 1st respondent issued a single notice under both the rules thereby violating the mandate of law. The Tribunal rejected this contention by relying on the Judgment of the Apex Court in **Canara Bank** (supra). The Hon'ble Division Bench reviewed the pre-amended and post amendment provisions of the Act and the Rules and precedent decisions. Hon'ble Division Bench held:

“13. What is important to note both from the amended and unamended provisions of Section 13(8) and Rule 9(1) is that both of them do not speak in express terms, about the equity of redemption available to the mortgagor. The amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale. A restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. The payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Securitisation Act, 2002. Redemption comes later. But unfortunately, some Courts, on a wrong reading of the decision of the Supreme Court in Mathew Varghese v. M. Amritha Kumar³, have come to the conclusion as though Section 13(8) speaks about the right of redemption. The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not. It may be seen from paragraphs-34 to 36 of the decision of the Supreme Court in Mathew Varghese that the Supreme Court took note of Section 60 of the Transfer of Property Act and the combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act to come to the conclusion that the extinction of the right of redemption comes much later than the sale notice. Therefore, we should first understand that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.”

“14. Perhaps the Courts were tempted to think that Section 13(8) speaks about redemption, only on account of what is found in Rule 3(5) of the Security Interest (Enforcement) Rules, 2002. Rule 3(5) inserted by way of amendment with effect from 04-11-2016 states that the demand notice issued under Section 13(2) should invite the attention of the borrower to the provisions of Section 13(8), in respect of the time available to the borrower to redeem the secured assets. Today, it may be convenient for one borrower to contend that the right of redemption will be lost immediately upon the issue of notice under Rule 9(1). But if it is held so, the same would tantamount to annulling the relevant provisions of the Transfer of Property Act, which do not stand expressly excluded, insofar as the question of redemption is concerned.”

“15. Keeping the above distinction in mind, if we come back to the contention with regard to the notice period of 30 days between the publication under Rule 8(6) and the sale under Rule 9(1), it may be seen that the Rules do not contemplate two different notices, one under Rule 8(6) and another under Rule 9(1). We have already extracted both the Rules. Rule 8(6) mandates - (i) the service of a notice of sale on the borrower, (ii) publication of a public notice in two leading Newspapers, of which one should be in vernacular language and (iii) affixture of the notice of sale on a conspicuous part of the immoveable property. This is in addition to the option available to the Authorised Officer under Rule 8(7) to put the notice on the website of the secured creditor.

“16. All that Rule 9(1) says is that no sale of immoveable property in the first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in the Newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower.”

“17. **Rule 9(1) does not stipulate a separate notice to be published. This Rule merely makes a reference to the notice of sale served on the borrower. The words “notice of sale has been served to the borrower” appearing towards the end of the main part of sub-rule (1) of Rule 9, cannot be construed as one more notice of sale, apart from the notice of sale to be served on the borrower under Rule 8(6). If this is so construed, then the borrower should have 60 days time, with the first 30 days following the notice of sale under Rule 8(6) and the second period of 30 days following the notice under Rule 9(1).** In fact, the proviso to sub-rule (1) of Rule 9 steers clear of any doubt. The proviso speaks about the failure of the first attempt of the secured creditor. Once the secured creditor fails in his first attempt, then the Authorised Officer should **“serve, affix and publish notice of sale of not less than 15 days to the borrower, for any subsequent sale”**.

“18. Therefore, the number of notices of sale required to be issued actually depend upon the number of times the property is put to sale. If Rule 9(1) is construed in such a manner as to oblige a secured creditor to issue one more notice apart from the notice under Rule 8(6), the first sale will be preceded by 2 notices and the subsequent sales will be preceded by one notice each. **The correct way of looking at the rules is to say that in respect of the first auction, there has to be only one notice under Rule 8(6). But the date of the auction should fall beyond 30 days from the date of publication of sale. If no sale takes place on the first occasion, a second notice is mandated only under the proviso to sub-rule (1) of Rule 9 and this second notice shall be of a duration of 15 days. If the second attempt also fails, a third notice may be issued under the proviso to sub-rule (1) of Rule 9, of a duration of not less than 15 days for the third auction.**”

“21. It may be seen from Rule 8(6) that the main part of the sub-rule speaks about service of notice of 30 days to the borrower. The proviso to sub-rule (6) of Rule 8 speaks about the publication of notices in Newspapers. Since Rule 9(1) makes a reference to the proviso to Rule 8(6), in the context of public notice and also since there is no reference to Rule 8(6) in Rule 9(1) (except with reference to the proviso) when it speaks about notice of sale served to the borrower, Courts have come to think that two notices are required to be served on the borrower, one under Rule 8(6) and another under Rule 9(1).

“22. In fact, the disjunction between - (i) a public notice of sale as referred to in the proviso to sub-rule (6) of Rule 8 and (ii) a notice of sale served to the borrower, maintained in Rule 9(1) by the use of the word “or”, was explained in Mathew Varghese by the Supreme Court. In paragraph-31 of the report, the Supreme Court held in Mathew Varghese that this disjunction should be read as a conjunction. The Court said that the word “or” should be read as “and”.”

“23.The moment the word “or” appearing in Rule 9(1) is read as “and”, there is no scope for concluding that Rule 9(1) requires one more notice to be served to the borrower, in addition to the notice served to the borrower under Rule 8(6).”

19. In the peculiar facts of that case, Hon’ble Division Bench upheld the decision of the DRT. The Hon’ble Division Bench was not informed of the decision of another Division Bench in **M/s. Aditya Industries** (supra) wherein the Division Bench held that decision in **Sri Sai Annadhatha Polymers** is not good law. In **Concern Readymix**, learned Division Bench vividly elucidated the interplay of the provisions in the Act and the Rules. We are in respectful agreement with enunciation of law in **M/s.Aditya Industries** and **Concern Readymix**.

20. The issue of right of redemption was considered in **Amme Srisailam vs. Union Bank of India and others** (W.P.No.11435 of 2021, dated 17.08.2022). While considering the issue learned Division Bench looked into the decision in **Concern Readymix**. The Division Bench said:

“38. After referring to the amendments brought to the Security Interest (Enforcement) Rules, 2002, this Court took the view that amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of the secured assets by way of lease, assignment or sale if the dues are paid before issuance of notice for public auction. Thereafter it has been held that a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor. Payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act. Redemption comes later. It has been held as follows:

The danger of interpreting Section 13(8) as though it relates to the right of redemption, is that if payments are not made as per Section 13(8), the right of redemption may get lost even before the sale is complete in all respects. But in law it is not.

39. Thus this Court emphasised that the right of redemption is not lost immediately upon the highest bid made by the purchaser in an auction is accepted.

xxx

46. Therefore, on a careful application of Sections 35 and 37 of the SARFAESI Act, it is evident that the situation contemplated under Section 13(8) of the SARFAESI Act does not exclude application of Section 60 of the Transfer of Property Act, 1882. As explained by this Court in **Concern Readymix** (supra), a restriction on the right of the mortgagee to deal with the property post issuance of notice for public auction is not the same as the right of redemption available to the mortgagor.”

21. In the instant case, the 30 days gap between notice under Rule 8(6) and notice under Rule 9(1) was maintained. When the first auction process was not successful second sale notice was issued under Rule 9(1) with 15 days grace period between the sale notice and date of auction. As second attempt was also not successful, third notice under Rule 9(1) was issued again with 15 days grace period. These two notices are in compliance with Rule 9(1) proviso, as it stands when those two notices were issued.

22. It is thus clear that before conducting auction to sell secured asset the Bank followed the statutory mandate. Therefore, the sale of secured asset was validly held.

23. The Tribunal grossly erred in holding that after notice under Rule 8(6), there must be 30 days gap before issuing notice under Rule 9(1). Such a requirement was as per per-amendment of Section 13(8) and Rule 8(6) and Rule 9 (1). After amendment of Rule 9(1), there is no

requirement to issue notice under Rule 8(6) for second and subsequent sale notices and only under Rule 9(1) second and subsequent sale notices are to be issued by maintaining a gap of 15 days between notice date and auction date.

24. Having regard to the law on the subject noted above and statutory scheme, we do not see any illegality in conducting auction on 28.02.2017. The order of the Debts Recovery Tribunal-II at Hyderabad in S.A.No.32 of 2017 on point (ii) is not sustainable. It is accordingly set aside. The Writ Petitions are allowed. Pending miscellaneous applications if any shall stand closed.

P.NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

Date: 02.03.2023
Rds/KKM

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NOs.28320 AND 28947 OF 2018

Date: 02.03.2023

Rds/KKM