

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**

*** * * ***

W.P.No.17898 of 2022

Between:

M/s S K Cars Lounge

Petitioner

VERSUS

Union of India
Rep by its Principal Secretary
Ministry of Finance
New Delhi & 4 others

Respondents

JUDGMENT PRONOUNCED ON: 26.04.2022

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
- Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
- Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :
- Yes**

UJJAL BHUYAN, J

*** THE HONOURABLE SRI JUSTICE UJJAL BHUYAN**

AND

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! Counsel for Petitioner : Mr. A.P.Reddy

^ Counsel for the respondent No.1: Mr. N.Rajeshwar Rao

Counsel for the respondent No.2: Mr. G.Prabhakar Sarma

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> HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA
WRIT PETITION No.17898 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. A.P.Reddy, learned counsel for the petitioner; Mr. B.Mukherjee, learned counsel appearing on behalf of Mr. N.Rajeshwar Rao, learned Assistant Solicitor General for respondent No.1-Union of India; and Mr. G.Prabhakar Sarma, learned counsel for respondent No.2-State Bank of India.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of letter dated 25.03.2022 issued by the 2nd respondent and also seeks a direction to the said respondent to accept the balance 75% of the sale price.

3. Case of the petitioner is that respondent No.2 had conducted auction sale of the schedule property on

28.12.2021. Details of the schedule property are mentioned in paragraph 3 of the writ affidavit, which are as under:

“land admeasuring Ac. 3-00 Guntas in Sy. No. 182 and Ac. 2-15 Guntas in Sy. No. 183 total admeasuring Ac. 5-15 Guntas of Kondurgu Village and Mandal, Mahboobnagar District”

4. The auction sale was conducted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the ‘SARFAESI Act’) for failure of the borrowers to repay the loan amount.

5. Petitioner participated in the auction and became the highest bidder at its bid value of Rs.5,32,00,000.00. Accordingly, petitioner was declared as the successful bidder by respondent No.2, following which petitioner remitted 25% of the sale price to respondent No.2. Respondent No.2 advised the petitioner to deposit the balance 75% within 15 days of auction sale.

6. Petitioner requested respondent No.2 for extension of time for paying the balance 75%. It is stated that 2nd respondent accepted the request of the petitioner and extended the time for payment of the balance 75% of the sale price till 27.03.2022.

7. In the meanwhile, the borrowers i.e., respondent Nos.3 to 5 had filed a writ petition before this Court being W.P.No.1005 of 2022 seeking quashing of E-auction sale notice dated 13.12.2021, whereby auction was proposed on 28.12.2021. After hearing learned counsel for the parties, this Court *vide* order dated 07.01.2022 declined to grant relief to the petitioners (borrowers), but granted liberty to approach the jurisdictional Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

8. Four days thereafter, the borrowers again moved this Court during vacation by filing W.P.No.1991 of 2022 seeking the same relief. Vacation Bench passed an order on 12.01.2022 granting interim stay subject to petitioners (borrowers) depositing Rs.85 lakhs within six weeks.

However, during the hearing on 06.04.2022, it transpired that the aforesaid amount was not deposited by the borrowers despite order of this Court. This Court by a detailed order dated 06.04.2022 held that petitioners (borrowers) had suppressed material facts and had also not complied with the order of the Court. It was observed that repeated filing of writ petitions by the petitioners (borrowers) was nothing but an attempt to frustrate attempt of the secured creditor from realizing its outstanding dues. Relevant portion of the order dated 06.04.2022 is extracted hereunder:

“16. We have carefully gone through the averments made in the supporting affidavit. We find that the above facts relating to filing of repeated writ petitions by the petitioners have not been mentioned. There is thus clear suppression of material facts. This Court had earlier taken the view while dismissing Writ Petition No.29242 of 2021 filed by petitioner No.1 that it was nothing but an abuse of the process of the Court and had imposed costs of Rs.2,000/-. Petitioners have not only suppressed material facts but have also not complied with the order of this Court dated

02.07.2020 in W.P.No.9508 of 2020 filed by petitioner No.1 whereby petitioner No.1 was directed to pay 25% of the outstanding dues by the end of July, 2020 and balance 75% of the outstanding dues by the end of August, 2020. Admittedly, petitioners have not complied with this order and made the payment as directed by this Court.

17. A litigant who suppresses material facts and additionally does not comply with the order of the Court is not entitled to a hearing under Article 226 of the Constitution of India. Repeated filing of writ petitions by the petitioners is nothing but an attempt to frustrate attempt of the secured creditor from realising its outstanding dues.

18. That being the position and as a matter of fact, after this Court had passed the order on 02.07.2020, there is hardly any scope for adjudication on the grievance raised by the petitioner. In view thereof, the present writ petition is liable to be dismissed with costs.”

9. From a perusal of the order dated 06.04.2022, we find that present petitioner (auction purchaser) was arrayed as the 3rd respondent in W.P.No.1991 of 2022. In the aforesaid proceeding, it had filed an interlocutory application for extension of time to deposit balance 75% of the sale price.

The said prayer was not considered by the Court as it was made by a respondent. However, liberty was granted to the auction purchaser to approach the appropriate forum to seek a positive direction. This Court held thus:

“19. At this stage, learned counsel for third respondent submits that being the auction purchaser respondent No.3 has filed an interlocutory application seeking extension of time to deposit balance 75% of the sale price. Being a respondent, it is not open to respondent No.3 to seek a positive direction from the Court in a writ petition filed by some other party. If respondent No.3 seeks any positive direction, it has to approach the appropriate forum in accordance with law, but certainly not as a respondent.”

10. Finally, by the aforesaid order dated 06.04.2022, the writ petition was dismissed with costs of Rs.25,000/-.

11. From the above, it is evident that there was a stay order passed by this Court on 12.01.2022 restraining the respondents from proceeding further with the auction sale. On dismissal of the writ petition on 06.04.2022, the stay

order stood vacated. In other words, there was a stay order operating from 12.01.2022 to 06.04.2022.

12. Rule 9 of the Security Interest (Enforcement) Rules, 2002 (briefly referred to hereinafter as the 'SARFAESI Rules') deals with time of sale, issue of sale certificate and delivery of possession, etc. Sub-Rule (3) says that 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 25% of the amount of sale price, which is inclusive of earnest money deposit to the authorised officer conducting the sale. In case of any default, the property shall be sold again. Sub-Rule (4) is relevant and is extracted hereunder:

“(4) The balance amount of 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, in any case not exceeding three months.”

13. Thus, what Sub-Rule (4) of Rule 9 of the SARFAESI Rules says is that the balance 75% of the sale price shall be paid by the purchaser to the authorised 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 secured creditor, in any case not exceeding three (03) months.

14. In the instant case, 25% of the sale price was paid on 29.12.2021. Within 15 days of confirmation of sale i.e., 15 days from 29.12.2021, petitioner being the auction purchaser was required to pay the balance 75%. Now upon a request made by the petitioner, respondent No.2 extended the said period by three (03) months, which was upto 27.03.2022.

15. We have already noticed that there was a stay order passed by this Court in W.P.No.1991 of 2022 which continued from 12.01.2022 till 06.04.2022 i.e., for 83 days. Admittedly, when the stay order passed by this Court was operating, further steps consequent upon the auction sale,

which took place on 28.12.2021 could not have been taken either by the secured creditor or by the auction purchaser. The steps consequential to the auction purchase could be taken only after recall of the stay order on 06.04.2022. Therefore, the period of stay from 12.01.2022 to 06.04.2022 i.e., 83 days would have to be excluded while computing the extended period of three (03) months for deposit of 75% of the sale price by the auction purchaser.

16. We may now turn our attention to letter dated 25.03.2022 issued by the 2nd respondent to the petitioner. As per the said letter, the extended period for payment of 75% was till 27.03.2022. Petitioner was asked to deposit the balance 75% by 27.03.2022, failing which it was stated that the 25% already deposited by the petitioner would stand forfeited under Rule 9(5) of the SARFAESI Rules, whereafter the schedule property would be re-sold.

17. In view of what we have discussed above, the letter dated 25.03.2022 cannot be sustained on facts as well as in law. Consequently, we set aside the letter dated

25.03.2022 and all consequential letters pursuant thereto and direct that petitioner shall deposit the balance 75% of the sale price within 7 days from the date of receipt of a copy of this order, which shall be accepted by the 2nd respondent, whereafter the 2nd respondent shall take necessary steps for issuance and registration of the sale certificate in favour of the petitioner.

18. This disposes of the Writ Petition. However, there shall be no order as to costs.

19. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

UJJAL BHUYAN,J

SUREPALLI NANDA, J

Date: 26.04.2022

Note: L.R. copy to be marked.
(B/o.)
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