

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 879/2022

Om Prakash Chandravanshi, R/o H. No. 118, Ward No. 5, Rehti Chakaldi Road, Village Guderiya, Tehsil Rehti, District-Sehore (M.P.), PIN-466001.

.....Appellant

Versus

1. Ritesh Kumar Malviya, R/o Village-Nayagoan, Tehsil Rehti, District Sehore (M.P.), PIN-466001.
2. Salakram Yadhuvanshi, R/o Village- Sagoniya, Post-Salankarpur, Tehsil-Rehti, District-Sehore (M.P.), PIN-466001.
3. State Bank of India, Rehti Branch, Tehsil Rehti, District-Sehore (M.P.), PIN-466001 through Authorized Officer.

.....Respondents

Advocates, who appeared in this case:

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| For the appellant | Ms. Katyayini, Advocate |
| For the other respondent nos. 1 & 2-borrowers | Ex-parte |
| For the respondent no. 3-Bank | Shri Abhishek Kapariya, Advocate holding brief of Shri P. K. Srivastava, Advocate |

JUDGMENT

Date of Pronouncement: 19.06.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed by the appellant under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the order dated 09.05.2022, whereby the Securitization Application No. 171/2020 filed by the respondents-borrowers has been allowed.
2. Brief facts of the matter are that the respondent no. 1 was granted certain credit facilities by the respondent no. 3-Bank, to which the respondents no. 1 & 2 created equitable mortgage over their property by depositing original title deeds with the respondent-Bank. Since the respondents-borrowers did not maintain the financial discipline, therefore, the account was classified as NPA on

25.03.2017 and a demand notice dated 15.06.2018 was issued u/s 13(2) of the SARFAESI Act for a sum of Rs.21,02,407/- followed by possession notice dated 03.10.2018 u/s 13(4) of the said Act. It appears that thereafter, the respondent-Bank obtained an order dated 17.12.2018 from the District Magistrate, Sehore u/s 14 of the SARFAESI Act.

3. The respondents-borrowers challenged the demand notice, possession notice and order dated 17.12.2018 passed by the District Magistrate before the Tribunal below by filing S.A. No. 127/2019. During pendency of the said S.A., the respondent-Bank issued sale notices dated 24.08.2019 and 11.10.2019, which was challenged by the borrowers in their pending S.A. by filing interim relief applications. The said S.A. was disposed of finally vide order dated 15.11.2019 with certain conditions, failing which the respondent-Bank was made free to proceed for its recovery by issuing fresh sale notice. Since the respondents-borrowers did not comply with the said order, therefore, the respondent-Bank issued fresh sale notice dated 07.02.2020 scheduling the auction of the property in question on 16.03.2020. The said sale notice was challenged by the borrowers by filing the present S.A. before the Tribunal below, which was allowed vide order impugned and the auction sale was set aside. Being aggrieved by the said order, the present appeal has been filed by the appellant-Auction Purchaser.
4. Learned counsel for the appellant submitted that the appellant had purchased the property in question in the auction conducted by the respondent-Bank on 16.03.2020 and after deposition of entire sale consideration, the sale certificate was issued and possession was also handed over to the appellant. It was

further contended that the sale cannot be set aside unless fraud or material illegality is proved, as neither the borrower nor any other party has alleged that the auction was fraudulent. It was also contended that the Tribunal below vide order impugned has directed to return the sale consideration along with 10% interest to the appellant, which is not sufficient compensation for loss and expenses incurred over the said auction.

5. It was lastly canvassed on behalf of the appellant that the appellant was not given any opportunity of hearing by the Tribunal below while passing the order impugned and setting aside the aforesaid auction sale. It was further contended that the appellant's counsel was informed that the matter was fixed for hearing on 17.05.2022 and accordingly, the appellant appeared, but on that date, the case was not listed. It was also contended that the respondents-borrowers had moved an urgency application for preponment of date fixed for hearing without intimation to the appellant, which was not in the knowledge of the appellant and as such the order impugned was passed behind the back of the appellant, which vitiates the entire process and makes the order unsustainable in law. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.
6. Learned counsel for the respondent-Bank has supported the arguments as advanced by the learned counsel for the appellant-Auction Purchaser adding further that the respondents-borrowers had earlier filed an Appeal No. 127/2019 challenging the demand notice, possession notice and the order passed u/s 14 of the SARFAESI Act, which was disposed of vide order dated 15.11.2019 granting concession to the borrowers for repaying the

dues in installments by 25.03.2020. It was thus contended that the challenge in respect of demand notice, possession notice and order dated 17.12.2018 passed by the District Magistrate has attained finality. It was also contended that since the order dated 15.11.2019 passed by the Tribunal below was not complied with by the respondent-borrowers, therefore, the fresh auction sale notice dated 07.02.2020, scheduling the auction of the property in question was issued and the same was sent to the borrowers through registered post on 13.02.2020 and the same was also published in two newspapers on 11.02.2020, as the same was also affixed on the property in question. It was further contended that before effecting the sale, the property in question was got valued by the Bank from its approved valuer and the reserve price was fixed pursuant to the same.

7. It was further contended that in the impugned order dated 09.05.2022 the Tribunal below had framed three issues i.e. (i) validity of the mortgage, (ii) whether the proceeding initiated by the bank is valid or liable to be set aside and (i) whether the auction proceeding dated 16.03.2020 and sale is liable to be set aside.
8. It was also contended that while deciding the issue no.1, the Tribunal below observed that the valid security had been created in favour of the respondent-bank, whereas decided the issue no.2 & 3 against the respondent-bank.
9. It was further contended that the Tribunal below had observed that sale notice dated 07.02.2020 was sent through the registered post, but the postal receipts are not legible. It was further observed that publication of sale notice was made on 11.02.2020 and it was affixed on the property in question. It was further contended that

the property in question was sold for a sum of Rs 18.80 lacs. It was also contended that the Tribunal below by observing that the Bank had failed to file any valuation report with the objection and the entire sale proceed was deposited in 134 days has set aside the auction sale and its all subsequent actions including the sale certificate and the sale deed also.

10. It was further contended that the Tribunal below while deciding the S.A. on merits has failed to consider the genuineness of the postal receipt annexed with the objection and if it was not properly legible, the Tribunal below had every power to summon the original postal receipt, but instead of giving opportunity to submit the original postal receipt, the Tribunal below had wrongly and illegally recorded adverse finding against the respondent-Bank.
11. It was further contended that from the perusal of the entire facts stated in the S.A. No 171 of 2020 it is reflected that respondent no.1 & 2 have not taken any ground of non-compliance of Rule 8(5) nor they have made any averments against the fixation of reserve price, but the Tribunal below had wrongly and illegally recorded its finding regarding non-filing of the valuation report with the objection.
12. It was further contended that during the pendency of the S.A. No. 171 of 2020, the Bank sold the property in question and thereafter neither the respondent no.1 & 2 have amended their pleadings to challenge the sale certificate and sale deed and there is no pleading in the S.A. regarding non-compliance of the Rule 9(3) and 9(4) of the Security Interest (Enforcement) Rules 2002.

13. It was further contended that the auction purchaser had deposited EMD on 9.3.2020 before the date of sale and 15% sale proceed on 17.3.2020 on the next day of sale, hence there is no violation in compliance of Rule 9(2) and 9(3) of the Security Interest (Enforcement) Rules, 2002.
14. It was also contended that before completion of 15 days period for deposit of the remaining sale proceed, there was lockdown in the entire country w.e.f. 24.3.2020 and all services were suspended in the country and the lockdown continued until 30.6.2020, therefore, the auction purchaser was entitled for extension of 90 days as prescribed in the Rules, 2002 and as such the auction purchaser deposited the remaining sale proceed within the stipulated period on 30.7.2020 i.e. within 30 days from uplifting of the lock down. It was thus contended that the deposit in compliance of Rule 9(4) is also covered as per the order passed by Hon'ble Apex Court in Suo-moto petition No. 3 of 2020. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.
15. It appears that despite service of notice, no one had appeared on behalf of the respondents-borrowers, therefore, they were directed to be proceeded ex-parte by this Tribunal vide order dated 20.01.2025.
16. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the respondents-borrowers had challenged the demand notice, possession notice and order dated 17.12.2018 passed by the District Magistrate, Sehore by filing the S.A. No. 127/2019, which was finally disposed of by the Tribunal below vide order dated 15.11.2019 and the earlier auction sale notice was set aside and the respondents-borrowers were given liberty to redeem their

property by depositing the dues of the Bank within time as framed by the Tribunal below in the said order. The said order had never been challenged by the respondent-borrower, therefore, the challenge of demand notice, possession notice and order dated 17.12.2018 has attained finality.

17. So far as the reserve price fixed by the respondent-Bank is concerned, the respondent-Bank got the property in question valued from the approved valuer. Copy of the valuation report dated Nil is placed at page no. 18 to 23 of the reply of the respondent-Bank. As per the said report, the market value of the property in question is shown to be Rs.23.50 lakhs, realiseable value Rs.21.00 lakhs and the distress value Rs.18.80 lakhs. As per sale notice dated 07.02.2020, the reserve price of the sale in respect of the property in question was fixed at Rs.18.80 lakhs, which is the distress value of the property in question as assessed by the approved valuer of the respondent-Bank. It is relevant to point out that the first sale was set aside by the Tribunal below in the earlier S.A. filed by the respondents-borrowers. Thus the present sale was the first sale, therefore, the reserve price could not be fixed at the distress value of the property in question as assessed by the valuer, as the property has been sold by the Bank on the said price, thus the property has been sold at the distress value for the first time. Thus it can be said that the property has been sold at a throwaway price, which cannot be permitted to be done by the Bank. On this count alone, the auction sale conducted by the Bank on 16.03.2020 is liable to be quashed and its subsequent actions also.
18. So far as the auction sale dated 16.03.2020 is concerned, the sale notice was issued on 07.02.2020, which is stated

to have been sent through Registered Post on 13.02.2020 and the same was also published on 11.02.2020. It is also stated that the same was affixed on the property mortgaged with the Bank. The copies of the sale notice, dispatch register, affixation as well as publications are at page no. 12 to 17 of the reply filed by the respondent-Bank. Page no. 13 is the copy of dispatch register of the respondent-Bank, but is not supported by any postal receipts. From the said copy of the dispatch register, it cannot be inferred that the said notice was sent or served to the respondents-borrowers. Thus the filing of the copy of dispatch register is not sufficient to infer that the said notice was ever served upon the borrowers, which violates Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Further the page no. 14 is the copy of sale notice as well as affixation of the same, but the said affixation does not contain the date of affixation or the place of the same, therefore, the said document cannot be taken into consideration and as such, there is also violation of Rule 8(7) of the Rules, 2002.

19. So far as the publication of sale notice is concerned, the Tribunal below in para 16 of the order impugned has stated that the paper publication in English language was filed, but the same is illegible, but before this Tribunal the respondent-Bank has only filed the copy of Hindi daily newspaper in which the sale notice was published. Thus there is no option before this Tribunal but to accept the finding given by the Tribunal below in the said para of the order impugned. Thus there is also violation of provision of Rule 8(6) of the Rules, 2002.
20. Since the initial actions of the respondent-Bank with regard to auction sale dated 16.03.2020 are found to be defective and against the provisions of the Act and Rules

made thereunder, therefore, the other issues raised by the appellant as well as the respondent-Bank are not required to be dealt with further because if the initial actions are found to be defective, the subsequent actions would automatically fall to the ground.

21. In view of the discussions as recorded above, there is no infirmity or illegality in the order impugned. Consequently, the appeal filed by the appellant is dismissed with no order as to costs.
22. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

CHAIRPERSON

VN GIRI,PS