(2020) 09 DRT CK 0021

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 366 Of 2018

M/s. Varasiddi Vinayaka Granites APPELLANT

Vs

Authorised Officer, Canara Bank And Ors. RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 13(8)
Security Interest (Enforcement) Rules, 2002 — Rule 8(6), 8(6)(a), 8(6)(b), 9(1)

Citation : (2020) 09 DRT CK 0021

Hon'ble Judges : Duppala Vasudeva Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

This SA is filed by the applicant with a prayer (a) to set aside the auction conducted by the 1st respondent on 06.09.2018, by selling the schedule mentioned property to the 3rd respondent in pursuance of the measures taken u/s 13(4) of SARFAESI Act, 2002 and (b) to declare that the initiations taken by the respondents 1 and 2 are against to the laid down procedure under the SARFAESI Act, 2002 and the same are illegal, void and arbitrary in respect of the auction conducted on 06.09.2018 in pursuance of the e-auction sale notice dated 31.07.2018.

2. According to the facts of the case, the applicant submitted that he is the Partner of M/s. Varasiddi Vinayaka Granites at Marturu, Prakasam District and the said applicant firm is the principal debtor, who availed the CC loan for an amount of Rs.90 Lakhs (Rupees Ninety Lakhs only) in the year 2013 and adhoc limit of Rs.18 Lakhs from the 2nd respondent bank, by mortgaging the schedule mentioned property. The applicant further submitted that he availed the loan for doing the business in granite and further submitted that towards the discharge of the loan amount, he paid the repayments upto the year June, 2017 and due to the slump in the granite industry, the applicant fell in financial difficulties and

could not repay the amounts from the month of July, 2017. The applicant further submitted that on 31.05.2017, the 2nd respondent issued the recall notice by mentioning that the account has been classified as NPA and demanded the applicant to discharge the entire loan amount within seven days. The applicant further submitted that he approached the 2nd respondent bank by mentioning that there is no statutory period for declaration of his account as NPA and requested the 2nd respondent to grant further time to discharge the loan amount and in spite of the same on 06.11.2017, the 1st respondent issued the demand notice u/s 13(2) of SARFAESI Act. The applicant further submitted that he protested and objected the act of the 1st respondent in issuance of the demand notice and requested the 1st respondent to grant further time for discharge of the loan amount. The applicant further submitted that in spite of the request of the applicant, the 1st respondent issued the possession notice u/s 13(4) of SARFAESI Act on 02.02.2018. The applicant further submitted that the 1st respondent did not publish the said possession notice in two leading newspapers as per the rules and further submitted that again on 26.02.2018, the 1st respondent issued another possession notice without withdrawing the previous notice by mentioning that they took the symbolic possession of the schedule mentioned property. The applicant further submitted that he objected the issuance of the possession notice and further submitted that on 21.06.2018, the 1st respondent issued the intending sale notice to the applicant. The applicant submitted that on 31.07.2018, the 1st respondent made a paper publication of e-auction sale notice by mentioning that they are going to conduct the auction of the schedule mentioned property on 06.09.2018. The applicant further submitted that ·the schedule mentioned property is valued at Rs.4,37,35,000/-in the prevailing market values in the said area and whereas the respondents fixed the reserve price as Rs.184.54 Lakhs without taking into consideration of the prevailing market values in the said area. The applicant further submitted that he protested the fixing the reserve price at such lower rate and the 1st respondent did not consider the request of the applicant. The applicant further submitted that on 06.09.2018, the 1st respondent conducted the auction of the schedule mentioned property and sold the schedule mentioned property to the 3rd respondent with a simple hike of Rs.20,000/- over the Reserve Price. The applicant further submitted that strangely, the 3rd respondent is the tenant of the schedule mentioned property under the applicant and the 1st respondent and did not take any steps to take the physical possession of the schedule mentioned property by colluding with the 3rd respondent and the 3rd respondent only participated in the auction. The applicant further submitted that the 1st respondent did not affix the sale notice in the conspicuous part of the schedule mentioned property and as such no other bidders are participated in the auction conducted on 06.09.2018. Hence, both the circumstances are indicating that the 1st respondent is hand in glove with the 3rd respondent and as such no bidders, except the 3rd respondent are participated in the auction conducted on 06.09.2018 and being aggrieved by the actions of the respondent bank applicant filed the present SA appeal and prayed (a) to set aside the auction conducted by the 1st respondent on 06.09.2018, by selling the schedule mentioned property to the 3rd respondent in pursuance of the measures taken u/s 13(4) of SARFAESI Act, 2002 and (b) to declare that the initiations taken by the respondents 1 and 2 are against to the laid down procedure under the SARFAESI Act, 2002 and the same are illegal, void and arbitrary in respect of the auction conducted on 06.09.2018 in pursuance of the e-auction sale notice dated 31.07.2018.

3. Reply has been submitted by the 1st and 2nd respondent bank denying the SA averments and further submitted that material allegations mentioned in the main application are not true and are invented for the purpose of filing of the present application. It is submitted that the present SA became infructuous as the Respondent Bank conducted e-auction on 06.09.2018 of application schedule properties and also issued Sale Certificate in favour of 3rd Respondent who is Auction Purchaser purchased the application schedule property for an amount of Rs.1,84,74,000/- and also delivered the application schedule property to the 3rd respondent. It is submitted that the Respondent Bank No. I and 2 also adjusted the sale proceeds proportionately into three Loan in the following manner:-

SL No.

Case

Name of the Loan Account

Amount adjusted into Loan Account

1

SA 365/2018

M/s. Sai Charan Granites

Rs.31,64, 163/-

2

S.A.No. 366 of 2018

M/s. Varasiddi Vinayaka Granites

Rs.1,11,00,919/-

3

SA 367/2018

M/s. Sai Charan Exports

Rs.40,24, 1781-

Total

Rs.1,82,89,2601-

Difference amount of Rs.1,84,740/- i.e. 1% on sale proceeds of Rs.1,84,74,000/- is deducted towards TDS. 1st & 2nd respondent bank further submitted that the three firms M/s. Sai Charan Granites, M/s. Varasiddi Vinayaka Granites and M/s. Sai Charan Exports availed the following credit facilities :-

SL No.

Case

Name of the Loan Account

Amount adjusted into Loan Account

1

SA 365/2018

M/s. Sai Charan Granites

Rs.36 lakhs

2

S.A 366/ 2018

M/s. Varasiddi Vinayaka Granites

Rs.1,08,00,000/-

3

SA 367/2018

M/s. Sai Charan Exports

Rs.36 lakhs

It is submitted that as stated above the Respondent Bank altogether for three firms i.e. M/s. Sai Charan Granites, M/s. Varasiddi Vinayaka Granites and M/s. Sai Charan Exports sanctioned total amount of Rs. 180 lakhs on one common collateral security which is application schedule property and prime security is hypothecation of all varieties of stocks, book-debts etc. It is submitted that M/s. Sai Charan Granites is a Partnership firm for which K. Murali and Smt K. Pushpalatha are the Partners; M/s. Varasiddi Vinayaka Granites is also a Partnership Firm for which K. Murali; Smt K. Pusthpalatha, K. Madhu are the Partners; M/s. Sai Charan Exports is a Proprietary concern for which K. Murali is the Proprietor. It is submitted that all the three firms are running by the same family members as sister concerns in the line of Granite Stone cutting and polishing and a slab size granite processing plant. It is submitted that after availing loan from the respondent bank, the applicant was very irregular in repayment and inspite of several reminders and personal requests, the applicant did not pay the outstanding amounts due in loan account of applicant. Despite repeated reminders given by the respondent bank the applicant have failed to repay the debt due. So the respondent bank declared the account of applicant as NPA in accordance with the guidelines issued by the RBI. Subsequently the respondent bank got issued the Demand Notice on 06.11.2017 to the applicants u/s 13(2) of SARFAESI Act, 2002 demanding repayment of the amount due in loan account along with interest due as on that date. Subsequently after completion of statutory period of 60 Days the respondent bank had also issued Possession Notice on 26.02.2018 u/s 13(4) of SARFAESI Act, 2002 and also affixed the Possession Notice and further the said Possession Notice is also published in English Newspaper and Telugu Newspaper as contemplated under SARFAESI Act 2002. Even after publication of Possession Notice also, the applicant not paid the outstanding amount due in the Joan account of the applicant to the respondent Bank. Therefore the respondent bank issued Rule 8(6) notice to the applicant as last and final opportunity to discharge the entire liability due in the loan account of the applicants with interest, costs and expenses within 30 days from the date of receipt of 8(6) notice failing which the application schedule property will be sold as by any of the methods as mentioned in 8(6) Notice. It is submitted that the applicant acknowledged the Rule 8(6) Notice but no response for payment of the outstanding amount. Hence the Respondent Bank issued -e-auction Notice fixing e-auction on 06.09.2018 and also published the e-auction Notice on 31.07.2018 in Telugu Newspaper and English Newspaper of the application schedule property. The Demand Notice; proof of service of Demand Notice; Paper publication of Demand Notice published in Telugu and English Newspapers; Possession Notice; Proof of service of Possession Notice; Photograph obtained at the time of affixing Possession Notice; Paper publication of Possession Notice published in Telugu and English Newspapers; Rule 8(6) - 30 Days Notice; Proof of service of Rule 8(6) Notice; E-Auction Notice issued to the applicant; Proof of service of E-Auction; Photograph obtained at the time of affixing E-Auction Notice; Paper Publication of E-Auction Notice published in Telugu Newspaper and English Newspaper are filed by the Respondent Bank No.1 and 2. It is submitted that in the E-Auction conducted by the Respondent Bank No. I and 2 on 06.09.2018, the 3rd respondent was declared as successful bidder and accordingly the Respondent Bank No. 1 & 2 confirmed sale and further also issued Sale Certificate in favour of 3rd Respondent who is Auction Purchaser purchased the application schedule property for an amount of Rs.1,84,74,000/- and also delivered the application schedule property to the 3rd respondent and also adjusted the sale proceeds proportionately into three Loan accounts as stated supra. The Sale Confirmation Letter; Sale Certificate issued in favour of 3rd respondent along with statement of account copy are filed by the respondent bank No. 1 and 2. It is submitted that the contest of the applicants that the reserve price fixed by the Respondent Bank No. I & 2 is low is absolutely false. It is submitted that the applicant did not filed any valuation report as per the allegations made by them stating that the reserve price is low. It is submitted that the Respondent Bank 1 and 2 obtained Valuation Report from the Panel Valuer and accordingly the reserve price is fixed.

The valuation report given by the panel valuer is filed herewith for perusal of Tribunal. 1st & 2nd respondent bank further submitted that bank has followed the provisions of SARF AESI Act, 2002 and sold the schedule mentioned property to 3rd party auction purchaser validly and no tenable grounds has been made by the applicant herein in the application and total outstanding due amount to bank by three firms in total was Rs.2,10,90,487-14 Ps and keeping in view of the above 1st & 2nd respondent bank prayed to dismiss the present SA application. Along with reply, 1st & 2nd respondent bank filed list of documents viz. demand notice issued by respondent bank cit: 06.11.2017; acknowledgment of demand notice by the applicant; paper publication of demand notice published in Telugu & English newspapers; possession notice dt: 26.02.2018; proof of service of possession notice; photograph obtained at time of affixing possession notice; paper publication of possession notice published in Telugu & English newspapers; rule 8(6) - 30 days notice issued by bank dt: 21.06.2018: proof of service of rule 8(6) - 30 days notice; e-auction notice issued by the bank dt: 26.07.2018; proof of service of e-auction notice; photograph obtained at the time of affixing e-auction notice; paper publication of e-auction published in Telugu & English newspapers dt: 31.07.2018; Valuation Report issued by the panel valuer of the respondent bank dt: 28.02.2018; sale confirmation letter issued in favour of 3rd respondent dt: 06.09.2018; sale certificate issued in favour of 3rd respondent dt: 20.09.2019 and statement of account copy dt: 02.07.2019 respectively.

4. Written arguments has been filed by the 1st & 2nd respondent bank and is on the same lines as that of the reply submitted by it.

5. Reply has been filed by the 3rd respondent (auction purchaser) after declaration of loan account of the applicant as NPA, 1st respondent bank initiated SARFAESI proceedings to recover outstanding dues and further submitted that the firm M/s. Varasiddi Vinayaka Granites rep by its partner Sri Karampudi Murali is not the authorised person to file the application against the respondents and the said Karampudi Murali not filed any authorization letter before this Tribunal. 3rd respondent further submitted that applicant herein admitted issuance of notice u/r 8(6) of Security Interest (Enforcement) Rules, 2002 and publication of e-auction notice dt: 26.07.2018 in two newspapers on 31.01.2018 and therefore no latches on the part of 1st & 2nd respondent bank. 3rd respondent further submitted that he is the boanfide purchaser of schedule mentioned property and deposited initial amount and the balance amount as per the auction sale and respondent bank issued certificate in his favour and 3rd respondent took physical possession and further submitted that there are no grounds to file the present appeal by the applicant and therefore prayed to dismiss the present SA appeal.

6. Written arguments has been filed by the 3rd respondent and submitted that R3 is the auction purchaser herein and the applicant is the borrower availed loan from the 2nd respondent bank and the 2nd respondent bank declare the loan account as NPA and thereafter the 1st respondent initiated securitization measures against the applicant for recovery of bank dues. The 3rd respondent

further submit that the bank authorities followed all 13(4) measures under act 2002 and given several opportunities to the applicant to safeguard his properties under rule 8(6) of the Act 2002. The 3rd respondent submit that the applicant not challenged irregularities in securitization measures initiated by the authorized officer and the section 17 application filed by the applicant is devoid of merits and not liable for even numbering the application either in limitation or on merits. The 3rd respondent further submitted that the applicant firm M/s. Varasiddi Vinayaka Granites, Rep. by its partner Sri Karampudi Murali is not the authorized person to file the application against the respondents and said Karampudi Murali not filed any authorization letter before this Tribunal and further submitted that the applicant declaration in limitation para stating that on 21.06.2018 the respondent issued rule 8(6) notice to the applicant and on 31.07.2018 the 1st respondent published e-auction sale notice dated 26.07.2018 in Eenadu daily newspaper and in the Hindu newspaper clearly admission of rules under Act 2002 followed by the authorized officer hence the auction conducted on 06.09.2018 is valid and there are no letches in proceedings. The 3rd respondent further submitted that the firm admittedly taken loan of 30 lakhs as C.C. Limits in the year 2016 from the bank and also mortgaged schedule property for running their business in granite it is also clear admission of availing loan from bank. The 3rd respondent further submitted that the applicant stated in facts that he repaid the loan amount upto June 2017 and thereafter the applicant not paid amounts due to the slump in the Granite Industry and not repaid the amount from July 2017 this admission also proved the non payments of bank loan by the applicant. The 3rd respondent further submitted that the recall notice dated 19.09.2017 also issued by the bank to the applicant and the same was admitted in the para 3 of the application and un necessarily blamed the bank by the way of filing this application and also blamed the 3rd respondent is the tenant and purchased the schedule property in the auction and the 3rd respondent purchased the property as per the auction notification published in the newspapers and the 3rd respondent is also bonafide purchaser of the schedule property in the public auction and paid entire amounts as per the terms and conditions of the auction notice. The 3rd respondent further submitted that there are no grounds to file the application by the applicant and as per the rules under Act 2002 and the 3rd respondent purchased the property and followed every procedure as per the Act 2002 and therefore the SA is liable to be dismissed.

7. Addi. written arguments has been filed by the 3rd respondent and submitted that the present SA is filed by the applicant I borrower to set aside the auction conducted by the 1st Respondent on dt: 06.09.2018 by sale of schedule property to 3rd respondent in violation of the measures initiated u/s 13 (4) of SARFAESI Act and declare that the actions of Respondents 1 & 2 are illegal, void and arbitrary, in respect of the auction conducted on 06.09.2018, in pursuance of the Sale Notice dated 31.07.2018 and further submitted that the 3rd Respondent herein is a successful bidder and had deposited the entire sale consideration as

per the terms of the Auction Sale Notice and subsequently the Respondent No. I through its Authorized Officer had executed Sale Certificate in favour of this Respondent, after receiving the entire amount. The main contention of the borrower is that he is the Managing Partner of M/s. Varasiddi Vinayaka Granites located at Marturu, Prakasam District and they availed C.C. loan in the year 2016 from the 2nd Respondent Bank by mortgaging the schedule property and the applicants also availed loans for doing business in Granite Slabs and the contention of the application is that they paid the amounts till June, 2017 and due to slump in Granite Industry the applicant could not pay the amounts from July, 2018 due to financial problems. Further the averments that on dt: 19.09.2017 the 2nd Respondent issued recall notice by mentioning that the account was classified as NPA and demanded for payment of the loan amount. The said notice was received by the applicants, but there was no reply from the applicant. Therefore after completion of60 days statutory period the Possession Notice u/s 13 (4) was issued on 02.02.2018 but, as the applicant promised to repay the loan the publication could not be made and issued another Possession Notice on dt.26-02-2018 and got the same published in two local news papers, but due to technical reasons only the Possession Notice dt: 02.02.2018 could not be acted upon. There after the Respondent Bank issued Intended Sale Notice on 21.06.2018 that the applicants may pay the amounts due to the bank within 30 days, failing which the properties will be sold in Public Auction. A separate notice dt: 31.07.2018 was issued by the Respondent Bank for conducting e-auction on 06.09.2018. Therefore the Respondent Bank had strictly followed the procedure contemplated under the SARFAESI Act & the rules. The applicant herein had filed WP 19074/2018 before the Hon'ble High Court of Andhra Pradesh for declaration that the prior e-auction sale notice dt: 04.05.2018, issued by the bank for conducting sale on 14.06.2018 in respect of the schedule property is illegal before the Honourable High Court of Andhra Pradesh by pointing out irregularities and the Respondent Bank submitted that the E-auction Sale Notice dated 04.05.2018 and the earlier notice issued under Rule 8 (6), both have been cancelled and the bank will initiate fresh proceedings by following the procedure strictly and accordingly orders were passed by dismissing the Writ Petition. Therefore by following the procedure meticulously the respondent bank issued fresh sale notice and conducted e-auction by fixing the reserve price at Rs.184.54 lakhs even though the prevailing rate in the locality is very less and even the Government rate i.e. Market value as per SRO is half of the reserve price. Therefore the property was sold for more than the reserve price and as such the bank has conducted the sale very strictly following the procedure. In this Regard Rule 8 (6) (b) says "The security debt for recovery of which the property to be sold and (c) says the reserve price below which the property may not be sold". In this case the property was sold for higher amount and as such there are no lacunas on the part of the bank. The contention of the applicant that only Rs.20,000/- was paid excess than the reserve price and as such the sale is invalid and devoid of merits and 3rd Respondent purchased the property more than double the market rate and more than the reserve price, but had there been any buyers for purchasing the property over and above the reserve price, the applicant could have brought those persons for participation and for purchasing the same in the public auction, if at all the market rate in and around the locality is more as contended by the applicants. Valuation report filed by the applicant the valuer admitted that the SRO Value per sq. Yard is Rs.24,000/-, and for 140 Sq.Yards it comes to Rs.35,00,000/-. But he exaggerated the rate and mentioned it as Rs.2,40,000/- per sq.yard which was abnormal and not prevailing in the locality. Hence the valuation filed by the applicant is imaginary and cannot be relied upon. The Valuation made by applicant is on the basis of building penalization scheme date instead of date of construction of the building and hence the cost of construction is also incorrect. Further, if really the contention is true the applicants herein before publication of the sale notice ought to have exercised the right of redemption u/s 13(8) of SARFAESI Act. No such redemption application was filed by the applicant and the applicant, who also did not challenge the Demand notice u/s 13 (2), Possession Notice u/s 13 (4), auction notice under Rule 8 (6) Notice etc., except challenging the sale, after conducting the sale by the bank by public auction cannot maintain the above S.A. When the bank had sold away the property by way of the auction and 3rd party interest is created and Sale Certificate was executed by the bank without asking for the relief of setting aside the Sale Certificate, the above application for setting aside the sale notice, is illegal, unsustainable and not maintainable. 3rd Respondent further submitted that before participation in the auction 3rd Respondent had thoroughly verified the documents and the procedure followed by the bank and after satisfying the same, he participated in the auction and he became the highest bidder. Even then the applicant did not file the above application within the statutory period of 15 days, even though the balance amount was paid by 3rd Respondent as per his bid terms. After receipt of the entire bid amount by the bank, the Sale Certificate was issued in favour of 3rd respondent, the above application is filed. But the applicant did not come to the Tribunal with clean hands as he never sought to set aside the Sale Certificate. By virtue of execution of Sale Certificate 3rd party interest was created in favour of 3rd Respondent. 3rd respondent with great difficulty pooled up the entire bid amount of Rs.185.00 lakhs and as stated supra deposited the same with the respondent bank and upon receiving of the same the Respondent had executed a Sale Certificate. At every point, the applicant made attempts to object the measures taken by the bank, even though they are following the procedure under SARFAESI Act, and the measures initiated by the bank there under are being resisted illegally and keeping in view of the above 3rd respondent prayed to dismiss the present appeal.

8. The point for consideration is whether the applicant herein is entitled for (a) setting aside the auction conducted by the 151 respondent on 06.09.2018, by selling the schedule mentioned property to the 3rd respondent in pursuance of the measures taken u/s 13(4) of SARFAESI Act, 2002 and (b) to declare that the initiations taken by the respondents 1 and 2 are against to the laid down

procedure under the SARFAESI Act, 2002 and the same are illegal, void and arbitrary in respect of the auction conducted on 06.09.2018 in pursuance of the e-auction sale notice dated 31.07.2018 as prayed for or not.

9. Heard both sides. Ld Counsel for applicant submitted that u/s 13(2) demand notice was issued on 06.11.2017 and amount was not mentioned and u/s 13(4) possession notice which was issued on 02.02.2018 and the same was not published in newspapers and second possession notice was issued on 26.02.2018 without withdrawing first possession notice dt: 02.02.2018. Ld Counsel for applicant further submitted that on 21.06.2018 notice u/r 8(6) of Security Interest (Enforcement) Rules, 2002 was issued and on 31.07.2018 e-auction notice was issued with date of e-auction on 06.09.2018 and the reserve price was fixed at Rs.1,84,54,000/-. Ld Counsel for applicant further submitted that there was only hike of Rs.20,000/- by auction purchaser in thee-auction conducted on 06.09.2018. Therefore, Ld Counsel for applicant argued that respondent bank not followed the procedure laid down under SARFAESI Act, 2002 and the schedule property was sold at throwaway price. Ld Counsel for applicant further submitted that applicant filed valuation report and valued the schedule property at Rs.37,35,000/- which is prior to sale and respondent bank not obtained valuation of the schedule property and therefore keeping in view of the above, Ld Counsel for applicant prayed to allow the appeal. On the other hand, Ld Counsel for respondent bank argued that respondent bank followed the entire procedure laid down under SARFAESI Act, 2002 and therefore prayed to dismiss the present SA appeal. Ld Counsel for 3rd respondent submitted that the 3rd respondent is bonafide purchaser of the schedule property auctioned by the respondent bank and paid the entire sale considerations as per rules and therefore prayed to dismiss the present appeal.

10. Admittedly, the applicant is the Managing Partner of M/is. Varasiddi Vinayaka Garnites and the said partnership firm is the principal debtor, who availed the CC loan for an amount of Rs.90 Lakhs from the 2nd respondent bank by mortgaging the schedule mentioned property. It is the case of the applicant that applicant availed the said credit facility for doing the business in granite slabs trading and towards the discharge of the loan amount, he paid the repayments upto the year June, 2017. It is the case of the applicant that the account has been classified as NPA illegally and demanded the applicant to discharge the entire loan amount within seven days. But, it is not established by the applicant herein under what way declaration of the loan account of the applicant is illegal and further issuance of u/s 13(2) demand notice dt: 06.11.2017 is illegal. Applicant herein paid Rs.7,50,000/- on 14.06.2017 (in SA 365/2018) and there was three months time gap between 14.06.2017 and recall notice dt: 19.09.2017 (in SA 365/2018). Therefore, declaration of loan account of the applicant as NPA cannot be called as illegal and therefore I am of opinion that declaration of loan account of the applicant as NPA is in accordance of guidelines of RBI. Respondent bank contended that Demand notice issued to the applicant dt: 06.11.2017. Applicant contended that applicant herein approached respondent bank and protested and

objected demand notice dt: 06.11.2017. But, no documents were filed by the respondent bank to prove that applicant herein protested and objected demand notice dt: 06.11.2017. Respondent bank contended that thereafter the Ist respondent issued the possession notice u/s 13(4) of SARFAESI Act on 02.02.2018 and the same was published in two newspapers as contemplated under SARFAESI Act, 2002. Applicant contended that applicant herein objected the possession notice dt:02.02.2018. But, no documents were filed by the respondent bank to prove that applicant herein objected possession notice dt:02.02.2018. Respondent bank further contended that e-auction sale notice published in Eenadu and The Hindu daily newspaper on 31.07.2018. Therefore, it is crystal clear that respondent bank followed the entire procedure laid down SARFAESI Act, 2002 and conducted the sale of schedule property on 06.09.2018. The applicant herein contended that the schedule mentioned property is valued at Rs.4,37,35,000/- as per the prevailing market value but the respondent bank fixed the reserve price at Rs.184.54 Lakhs without taking into consideration of the prevailing market values in the said area. Applicant contended that there was only hike of Rs.20,000/- by auction purchaser in thee-auction conducted on 06.09.2018. But, on perusal of documents filed by the respondent bank, it is crystal clear that respondent bank followed the entire procedure laid down under SARFAESI Act, 2002 no illegality committed by the respondent bank. After verification of the documents filed by the respondent bank it is clear that the respondent bank declared the account of applicant as NPA in accordance with the guidelines issued by the RBI and subsequently the respondent bank got issued the Demand Notice on 06.11.2017 to the applicants u/s 13(2) of SARFAESI Act, 2002 demanding repayment of the amount due in loan account along with interest due and subsequently after completion of statutory period of 60 days the respondent bank had also issued Possession Notice on 26.02.2018 u/s 13(4) of SARFAESI Act, 2002 and also affixed the Possession Notice and further the said Possession Notice is also published in English Newspaper and Telugu Newspaper as contemplated under SARF AESI Act 2002. On issuance of second possession notice dt: 26.02.2018 it is implied that first possession notice dt: 02.02.2018 is withdrawn by the respondent bank. Thereafter, the respondent bank issued Rule 8(6) notice to the applicant to discharge the entire liability due in the loan account of the applicants within 30 days from the date of receipt of 8(6) notice failing which the application schedule property will be sold. Respondent bank filed proof of service of Rule 8(6) Notice. Thereafter, respondent bank issued e-auction sale notice with date of sale on 06.09.2018 and the same was published in two newspapers. Therefore, it is crystal clear that respondent bank validly issued u/s 13(2) demand notice; u/s 13(4) possession notice; notices u/r 8(6) & 9(1) of Security Interest (Enforcement) Rules, 2002 and conducted the sale of schedule property on 06.09.2018. In the e-auction held on 06.09.2018, the 3rd respondent was declared as successful bidder and accordingly the Respondent Bank No. 1 & 2 confirmed sale in favour of 3rd respondent and further respondent bank issued Sale Certificate in favour of 3rd Respondent who is Auction Purchaser who purchased the application schedule property for an amount of Rs.1,84,74,000/- and also delivered the application schedule property to the 3rd respondent and also adjusted the sale proceeds proportionately into three Loan accounts. Therefore, it is crystal clearly proved that respondent bank followed the entire procedure laid down under SARFAESI Act, 2002. As per the written argument filed by the respondent bank, the applicant is due of Rs.2,10,90,487-14 Ps in respect of all three loan accounts. 3rd respondent herein is the auction purchaser of schedule property in the auction conducted on 06.09.2018 and paid the entire sale considerations in accordance with rules.

11. The Ld. Counsel for the applicant relied upon the decision of Hon'ble High Court for the State of Telangana and Andhra Pradesh reported in 2019(1) ALD 157 in the matter of Kwality Agro Products, Warangal District vs Canara Bank, Madikonda Branch, Warangal held that 'issuance of, without properly and completely mentioning description of property to be sold as required by proviso to R8(6)(a) of Security Interest (Enforcement) Rules, 2002'.

However on the case on hand and upon verification from the sale notice dt.31.7.2018 it is crystal clear that the total description of the property to be sold was completely described by the respondent bank and therefore the principle laid down under the above decision relied upon by the applicant is not applicable to the present facts and circumstances of the case. Hence I feel that the arguments of the Ld. Counsel for the applicant cannot be taken into consideration and moreover the respondent bank crystal clearly establishes that the sale was held properly and there are no lacunae or violation on the part of the respondent bank and therefore under these circumstances I am of the considered opinion that the SA is devoid of merits.

12. The Ld. Counsel for the respondent No.3 also argued that the Respondent No.3 has purchased the schedule mentioned property in the auction conducted by respondent bank and respondent No.3 is a bonafide purchaser and upon perusal of the sale proceedings, I satisfy that the respondent No.3 is bonafide purchaser.

13. Therefore, considering the facts and circumstances of the case stated supra, I do not find any merit in the application filed by the applicant and nothing could be pointed out or substantiated by the applicant about the recourse taken by respondent bank under section 13(4) is not in accordance with the provisions of the Act and the rules made there under and as such does not necessitate any interference from this Tribunal. On the contrary the respondent bank has established that the recourse taken by the secured creditor/respondents under sub-section 4 of section 13 against the schedule property are in accordance with the provisions of the Act and Rules made there under and is entitled to take recourse to recover its dues in accordance with law. Thus this SA is found devoid of merit and deserves to be dismissed.

14. In the result, the SA.366 of 2018 is dismissed however without costs.

[Dictated to PS, transcribed by turn and corrected and pronounced by me in the open court on this day of 11th September, 2020]

