(2022) 02 TEL CK 0023

In the Telangana High Court

Case No : Writ Petition No. 23336 Of 2020

P. V. Bhaskar Rao APPELLANT

Vs

Indian Bank And Another RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 13(2), 13(4)
Recovery of Debts due to Banks And Financial Institutions Act, 1993 — Section 19

Citation : (2022) 02 TEL CK 0023

Hon'ble Judges : Ujjal Bhuyan, J;A.Venkateshwara Reddy, J

Bench : Division Bench

Advocate : T V L Narasimha Rao, V Dyumani

Final Decision : Dismissed

Judgement

1 This matter was heard on 19.01.2022 and 27.01.2022 was fixed for pronouncement of order. However, for unavoidable circumstances, the order

could not be pronounced on 27.01.2022. The order is delivered today.

2 We have heard Mr.T.VL Narasimha Rao, learned counsel for the petitioner and Ms.Dyumani, learned counsel for the first respondent. None has

appeared for the second respondent.

3 By filing this writ petition under Article 226 of the Constitution of India, petitioner seeks quashing of e-auction sale notice dated 09.12.2020 issued by

respondent No.1 for sale of the immovable properties mentioned in the schedule annexed to the said notice and further seeks a direction to the first

respondent to release the schedule properties to the petitioner against payment of Rs.16.12 crores towards schedule property No.1 and against payment of Rs.3.38 corres towards schedule property No.2 as valued by respondent No.1 at the time of sanctioning the One Time Settlement (OTS)

dated 26.10.2017 within a reasonable period.

4 Case of the petitioner as pleaded in the writ petition is that petitioner was a director of respondent No.2 company for the period from 01.10.2006 to

22.08.2014. Respondent No.2 had been banking with the Visakhapatnam branch of the first respondent since the year 2005 onwards. The aggregate

credit facility of respondent No.2 with respondent No.1 was up to Rs.71.50 crores. Ultimately, the credit facility stood extended up to Rs.198 crores

by the year 2016.

5 It is stated that a total of nine persons including the petitioner had signed security documents along with the second respondent during the year 2015

while mortgaging 26 immovable properties against the credit facilities made available to the second respondent.

6 However, for various reasons, the credit facility availed of by respondent No.2 was classified as Non Performing Asset (NPA) on 31.08.2016. This

was followed by issuance of demand notice dated 04.10.2016 by the Visakhapatnam branch of Indian Bank under Section 13 (2) of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (briefly referred to hereinafter as â??the SARFAESI

Actâ??) as per which the outstanding liabilities of the second respondent was fixed at Rs.141,68,07,548-07. Thereafter possession notices dated

27.12.2016 and 21.02.2017 were issued by the Visakhapatnam branch of Indian Bank to the petitioner under Section 13 (4) of the SARFAESI Act.

7 It appears that there were talks going on between respondent No.2 and the Visakhapatnam branch of Indian Bank for settlement of dues which

resulted in sanctioning of OTS by the bank authorities on 26.10.2017. As per the OTS, respondent No.1 decided to accept Rs.115 crores against the

total claimed dues of Rs.224.35 crores as on 31.12.2017.

8 According to the petitioner, respondent No.2 paid five quarterly installments of OTS dues amounting to Rs.61.875 crores, but failed to pay the

balance amount for various reasons. In all, respondent No.2 paid Rs.77.875 crores out of Rs.115 crores as a sequel to which respondent No.1

released 13 mortgaged properties by giving no objection certificate. But properties mortgaged by the petitioner were not released.

9 Though respondent No.2 represented before the Visakhapatnam branch of the Indian Bank on 30.03.2019 seeking extension of time for payment of

the balance OTS amount, the same was however rejected on the same day whereafter e-auction sale notice was issued on 04.11.2019 contemplating

auction sale of the schedule properties on 20.12.2019. However, such auction could not take place on the scheduled date for various reasons.

10 In the meanwhile, Visakhapatnam branch of respondent No.2 instituted an Original Application under Section 19 of the Recovery of Debts due to

Banks and Financial Institutions Act, 1993 (briefly referred to hereinafter as â?? the 1993 Actâ??) on 13.12.2019 before the Debts Recovery

Tribunal, Visakhapatnam for recovery of a sum of Rs.212,18,70,530-00 against the second respondent. The same was registered as O.A.No.1143 of

2019.

11 In the meanwhile, Visakhapatnam branch of Indian Bank issued fresh e-auction sale notice dated 05.03.2020 contemplating auction sale on

16.04.2020. Since the e-auction fell during the national lockdown, it did not receive any response. As a result, it failed to materialize.

12 The NPA account of respondent No.2 was transferred from the Visakhapatnam branch of Indian Bank to the Stressed Assets Management

Vertical Branch of Indian Bank at Hyderabad for recovery of the dues on 24.07.2020.

13 Though there were correspondences between the directors of respondent No.2 including the petitioner with the officials of the respondent No.1 for

settlement in terms of the OTS, it did not prevent the first respondent from issuing sale notice dated 03.11.2020 contemplating to conduct e-auction of

the schedule property on 25.11.2020.

14 Aggrieved by issuance of such sale notice dated 03.11.2020, petitioner filed W.P.No.20903 of 2020 before this Court on 17.11.2020. In the

meanwhile, respondent No.1, vide letter dated 19.11.2020, cancelled the OTS sanctioned on 26.10.2017. When the auction scheduled on 25.11.2020

did not receive any bidders; and as a result did not materialize, W.P.No.20903 of 2020 became infructuous.

15 Thereafter, respondent No.1 issued the impugned e-auction sale notice dated 09.12.2020 contemplating auction on 28.12.2020. Against the

aforesaid e-auction sale notice dated 09.12.2020, the present writ petition has been filed.

16 This Court, by order dated 24.12.2020, issued notice. While permitting the respondents to continue the e-auction as scheduled, they were however

directed not to finalize the auction till the next date.

17 On 17.11.2021 upon hearing the submissions made by learned counsel for the petitioner, the following order came to be passed:

â??After hearing learned counsel for the parties at some length, we find that auction sale of the schedule property belonging to the borrower

(petitioner) has failed on last many occasions, including the present occasion pursuant to last e-auction sale notice dated 09.12.2020.

According to learned counsel for the petitioner, even at this stage petitioner is willing to make payment more than the reserve price to respondent

No.1/Indian Bank for redeeming the property (secured asset).

Learned counsel for the respondent / Indian Bank seeks time to obtain instruction.â??

18 When the matter was next listed on 03.12.2021, learned counsel for the respondent â?" Indian Bank submitted that offer of the petitioner was not

acceptable to the Bank. Upon hearing learned counsel for the petitioner, this Court passed the following order:

â??Today, Mr.V.Sethu Madhava Rao, learned counsel for respondent â?" Indian Bank submits that offer of the petitioner is not acceptable.

Learned counsel for the petitioner submits that petitioner has arranged for a prospective buyer M/s.Gaurva Tradex Pvt. Ltd., represented by Mr.

Gaurav Agarwal, which is willing to pay Rs.17.60 crores for the schedule property, which is more than the reserve price of Rs.17.54 crores as per the

last sale notice dated 08.03.2021, which also did not fructify, as no bidder had responded to the sale notice.

After hearing learned counsel for the parties, we are of the view that at the intervention of higher authorities of Indian Bank, a settlement can be

arrived at between the parties, which may safeguard the interest of both the sides as repeated auction sales have proved to be futile.

Accordingly, Chief General Manager of Indian Bank, Hyderabad Region, shall look into the matter and appraise us of the developments either by

himself, or through an authorized representative / counsel.

Registry to communicate a copy of this order to the office of Chief General

Manager, Indian Bank, Hyderabad Region, expeditiously.â??

19 On 27.12.2021, Mr.P.S.Sudhakar Rao, Assistant General Manager of Indian Bank, Hyderabad Region was present in person. His submissions

were recorded by this Court in the following manner:

â??Though we did not call for the personal appearance of the Chief General Manager of Indian Bank, Hyderabad Region, Mr.P.S.Sudhakar Rao,

Assistant General Manager of Indian Bank, Hyderabad Region is present in person.

On a query by the Court, he submits that because of the pandemic and the resultant economic distress, the valuation of the schedule property was

considerably reduced. Though the earlier auction sales had failed, respondent No.1/Indian Bank would like to go for fresh auction sale after re-

valuation of the schedule property, since there is upturn in the market value of such property.

On a further query by the Court as to what would happen to the amount already deposited by the prospective buyer, Mr. Sudhakr Rao submits that the

said amount has been kept in a non-lien account. Subject to issuance of fresh auction sale notice, the same would be returned back to the prospective

buyer.

We record the statement made by the Assistant General Manager who is present in the Court.

Learned counsel for the petitioner may make his submissions on the next date.

Since in any event we had not called for the personal assistance of the Assistant General Manager, it is not necessary for the Assistant General

Manager or any officer of the Indian Bank to be present in court on the next date of hearing.â??

20 When the case was heard next on 19.01.2022, learned counsel for the petitioner submitted that petitioner is the mortgager of schedule I property as

per the impugned sale notice. According to him, in the last two years respondent No.1 has made more than six unsuccessful attempts to auction the

schedule properties starting with a reserve price of Rs.21.03 crores and reducing it progressively from auction to auction which now stands at

Rs.17.54 crores. On 27.05.2021 first respondent provided details of no-lien account asking the prospective buyer scouted by the petitioner to deposit

10% down payment, which payment was made by the prospective buyer on

15.07.2021 by depositing Rs.1.65 crores. On receipt of a communication

from respondent No.1 dated 25.09.2021, the prospective buyer improved its offer from Rs.16.50 crores to Rs.17.60 crores which is more than the

reserve price. According to the petitioner the estimated realizable value of the schedule â?" I property as on 26.10.2017 would be Rs.11.56 crores. On

30.11.2021 respondent No.1 rejected the offer of the prospective buyer without assigning any reason while the matter was pending before this Court.

It is in these circumstances learned counsel for the petitioner submits that exercising the extra ordinary jurisdiction of this Court under Article 226 of

the Constitution of India, respondent No.1 may be directed to release the schedule properties against payments made as per the valuation of the first

respondent at the time of sanctioning OTS dated 26.10.2017.

21 Ms.Dyumani, learned counsel for respondent No.1 submits that actually the writ petition has become infructuous. The auction scheduled on

28.12.2020 as per the impugned sale notice dated 09.12.2020 did not materialize for want of bidders. Insofar the second prayer is concerned, the OTS

dated 26.10.2017 was cancelled by respondent No.1. Against such cancellation of OTS dated 26.10.2017, the borrower i.e. respondent No.2 had filed

a writ petition before this Court but the same was dismissed. On the hearing held on 19.01.2022 we had called upon Ms.Dyumani, learned counsel for

respondent No.1 to furnish particulars of the writ petition filed by the borrower against rejection of OTS dated 26.10.2017. Subsequently a memo was

filed on behalf of respondent No.1 wherein reference has been made to W.P.Nos.21050 of 2020 and 20903 of 2020.

22 W.P.No.21050 of 2020 was filed by the borrower i.e. respondent No.2 to declare the e-auction scheduled on 25.11.2020 as illegal and for a

direction to respondent No.1 to revive the OTS dated 26.10.2017. In the meanwhile, at the instance of State Bank of India, insolvency resolution

process was initiated against respondent No.2 before the National Company Law Tribunal, Hyderabad whereafter interim resolution professional

came to be appointed. That rendered W.P.No.21050 of 2020 infructuous and is not being pursued. However, notwithstanding the above, petitioner

filed W.P.No.20903 of 2020 seeking the same reliefs. This writ petition was disposed of by this Court on 27.11.2020 in the following manner:

â??Be that as it may, since the impugned action failed and the company filed the application for OTS, it is for the company to pursue the same. The

cause in the writ petition does not survive.â??

23 As already noticed, petitioner has made two prayers in the writ petition. As per prayer No.1, the e-auction sale notice dated 09.12.2020 proposing

to hold e-auction of the schedule property on 28.12.2020 should be set-aside and quashed. As per learned counsel for respondent No.1, no such e-

auction could be held on 28.12.2020, or on any other subsequent date thereto, for want of bidders. Therefore, the e-auction scheduled on 28.12.2020

failed to materialize thereby rendering the impugned sale notice dated 09.12.2020 redundant. Learned counsel for the petitioner also agreed that no

auction took place on 28.12.2020. In such circumstances, the first prayer made in the writ petition has become infructuous.

24 Coming to the second prayer of the petitioner, we find that petitioner seeks a direction to respondent No.1 to release schedule property-I against

payment of Rs.16.12 crores and schedule property â?" II against payment of Rs.3.38 crores as valued by respondent No.1 itself at the time of

sanctioning of OTS dated 26.10.2017 within a reasonable period. Though the OTS rejection order is not available on record, we find from the

materials on record that respondent No.1 had written a letter dated 19.11.2020 to the respondent No.2 stating that proposal of the second respondent

dated 25.09.2020 for revival of OTS by making payment of balance OTS amount of Rs.34.275 crores was rejected by the competent authority as the

OTS sanctioned is more than three years old. However, in the same letter dated 19.11.2020 respondent No.1 requested respondent No.2 to submit a

fresh OTS offer along with down payment. Subsequent communications dated 25.09.2021 and 30.09.2021 would show that negotiations are still going

on between the parties for settlement of the outstanding dues.

25 In Bijnor Urban Cooperative Bank Limited Vs. Meenal Agarwal, Civil Appeal No.7411 of 2021, decided on 15.12.2021, Supreme Court has held

that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India directing a financial

institution / bank to positively grant benefit of OTS to a borrower. Such a decision should be left to the commercial wisdom of the financial institution /

bank.

26 In the above circumstances, the second prayer of the petitioner cannot be

acceded to since petitioner seeks release of the schedule properties upon

payment of the balance amount of OTS dated 26.10.2017 which has been cancelled by respondent No.1.

27 Thus no reliefs as sought for can be granted to the petitioner. However, we have already noticed that there is still a line of communication on

between the parties for settlement of the outstanding dues of respondent No.2; in fact, respondent No.1 has called upon the second respondent to

submit fresh OTS proposal by enhancing the settlement amount. It is entirely between the parties to try and settle the matter amicably. But in such a

process, the writ court would hardly have a role to play.

28 Subject to the observations made above, writ petition is dismissed. However, dismissal of the writ petition would not come in the way of the parties

reaching a negotiated settlement. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall also stand dismissed.