

(2011) 02 MAD CK 0139

In the Madras High Court

Case No : Writ Petition No. 325 of 2007 and M.P. No"s. 2 and 3 of 2007

Pandiyas and Suruthi Fabrics

APPELLANT

Vs

The Assistant General Manager and Authorized Officer, J.
Rajiv Subramanian and Mrs. Nirmala Jeyabalan

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 2, Order 23 Rule 3, 11
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 8

Citation : (2011) 02 MAD CK 0139

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : K.M. Vijay and for B. Saravanan, for the Appellant; N. Murugesan, for R1 and B.S. Gnanadesikan, for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—The Petitioners prayed for a declaration that the sale certificate is null and void and to restore the properties of the Petitioners to them.

2. The brief facts that are necessary for deciding the issue are as follows:

The Petitioner Firms availed loan from the State Bank of India and there was default in payment of dues and according to the first Respondent, the

accounts of the Petitioners became non-performing assets and therefore, action was taken under the SARFAESI Act and Section 13(2) notice

dated 8.6.2005 was issued directing the Petitioners to pay a sum of Rs. 1,62,60,158.65 being the amount payable by the two Firms. It was

followed by Section 13(4) possession notice dated 12.1.2006 and possession was taken by the secured creditors. Thereafter, various

correspondence took place between the Petitioners and the first Respondent and the Petitioners also wanted to avail one time settlement and the

Petitioners also filed various writ petitions before this Court for various relief's. According to the Petitioners, as per the advice of the first

Respondent bank, the Petitioners withdrew the writ petitions which fact was disputed by the first Respondent. Auction notice was issued on

23.5.2006 fixing the date of auction on 7.7.2006 and the properties belonging to South Fabrics viz., 76 cents in S. No. 665 part was valued

at Rs.110 lakhs being the reserve price and Rs. 55 lakhs was fixed as reserve price for the lands with building belonging to South Firms and

Factory building of Pandas. The Petitioner challenged the auction notice by filing O.A. No. 58 of 2006 before the Debt Recovery Tribunal and

conditional order was passed directing the Petitioners to pay a sum of Rs. 20,00,000/= and the Petitioners could not comply with the condition.

Thereafter, the Petitioners sought permission of the bank to sell the machineries and the bus belonging to the Petitioners and by the sale of the

machineries and the bus, a sum of Rs. 42,00,000/= was credited to the account of the Petitioners. According to the Petitioners, as per the advice

of the bank, they withdrew O.A. No. 58 of 2006 on 3.10.2006 which was also disputed by the bank. Thereafter, on 8.12.2006, the banks sold the

properties for a total sum of Rs. 1,23,10,000/= in favour of Respondents 2 and 3 under a private treaty and the sale certificate was issued on

15.12.2006 and the sale deeds were registered on 20.12.2006 which is challenged in this writ petition.

3. Mr. K.M. Vijay an, learned Senior Counsel for the writ Petitioners submitted that the sale conducted by the first Respondent bank was not in

accordance with the provisions of Sections 8 and 9 of the Security Interest (Enforcement) Rules, 2002 and the bank has also not followed the

provisions of Section 13(3A) of the SARFAESI Act and therefore, the sale is void and Respondents 2 and 3 will not get any right under the sale.

The learned Senior Counsel further submitted that during the tendency of the writ, on 20.3.2007, the Petitioners offered to pay Rs.1,41,00,000/=

to Respondents 2 and 3 and that was also accepted by the first Respondent as well as Respondents 2 and 3 and when the matter was posted on

24.3.2007, the Petitioners produced the Demand Draft for Rs. 1,41,00,000/=and at that time, the counsel for the Respondents refused to accept

the Demand Draft and by their own conduct, Respondents 2 and 3 are stopped from going back on their words and they are bound to accept the

Demand Draft forRs.1,41,00,000/= as agreed by them and release the properties and therefore on that account, the sale in favour of Respondents

2 and 3 is liable to be set aside. The learned Senior Counsel for the Petitioner relied upon the judgment reported in K. Raamaselvam v. Indian

Overseas bank (2009 (5) CTC 385) and submitted that when the sale was in contravention of Rules 8 and 9 of the Security Interest

(Enforcement) Rules 2002, the sale is liable to beset aside and also relied upon the judgments reported in Radha Raman Samanta Vs. Bank of

India and Others, , B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others, and Chhaganbhai Norsinbhai Vs. Soni Chandubhai

Gordhanbhai and Others, for the proposition that Respondents 2and 3 are bound by the undertaking given before this Court to accept the sum of

Rs. 1,41,00,000/= and they are stopped from going back from their words.

4. Learned Counsel for the first Respondent submitted that the accounts became non-performing Assets and therefore, the bank has taken action

under SARFAESI Act and u/s 13(2) followed by Section 13(4) and notices were given in accordance with the provisions of SARFAESI Act and

even though the Petitioners came forward to settle the amount, it is proved by their conduct and by various correspondence that they were not able

to make the payment and therefore, the bank has brought the property for sale by issuing auction notice and on the date of auction, there were no

bidders and even after that the Petitioners made a promise to bring the purchasers to settle their dues and they were not able to bring the

purchasers or to pay the amounts due and payable by them and therefore, the bank has no other alternative except to enter into a private treaty

with Respondents 2 and 3 for the sale of the property and as per Rule 8(5)(d) of the Security Interest (Enforcement)Rules, the first Respondent is

entitled to enter into private treaty for sale of the property ad therefore, the same cannot be challenged by the Petitioners. The learned Counsel

further submitted that the writ filed by the Petitioner is not maintainable and even if they are aggrieved by the sale of the property, they will have to

take steps under the provisions of the SARFAESI Act as laid down by the Honorable Supreme Court in the judgment reported in Transcore Vs.

Union of India (UOI) and Another, and therefore, the writ is not maintainable.

5. Mr. Gnanadesikan, learned Senior Counsel for Respondents 2 and 3 also supported the case of the first Respondent and submitted that the sale

by the first Respondent bank in favour of Respondents 2 and 3 is perfectly legal and the sale was conducted as per Rule 8(5) of the Security

Interest (Enforcement) Rules and the same cannot be questioned by the Petitioners. Mr. Gnanadesikan, learned Counsel for Respondents 2 and

3 further submitted that there is no question of estoppels against Respondents 2 and 3 and on 20.3.2007, the Petitioners offered to pay a sum of

Rs. 1,49,23,061/= and Respondents 2 and 3 agreed to accept the same and give back the properties to the Petitioners on condition of payment of

the said amount on 21.3.2007, but, the Petitioners weren't able to make payment on or before 21.3.2007 and therefore, the Petitioners cannot

rely upon the said acceptance as they have not acted according to the undertaking given by them. The learned Counsel for Respondents 2 and 3

further submitted that the writ petition is not maintainable as the Petitioners have got alternative remedy under the provisions of SARFAESI Act

and admittedly, no compromise was entered into between the parties in writing and signed by the counsel as per the provisions of Order XXIII

Rules 1 to 3 of the Code of CPC and the sale conducted by the first Respondent cannot be set aside. In support of his contention, the learned

Counsel for Respondents 2 and 3 relied upon the following judgments:

- 1) Gurpreet Singh Vs. Chatur Bhuj Goel,
- 2) Byram Pestonji Gariwala Vs. Union Bank of India and others,
- 3) K. Venkatachala Bhat and Another Vs. Krishna Nayak (D) by Lrs. and Others,
- 4) Adimali St. Paula Yakkobaya Suriyani Church Vs. Ithappiri Paily,
- 5) Fakir Mohamed Abdul Razak Vs. The Charity Commissioner, Bombay and Others,
- 6) Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala and others,
- 7) Rajender Singh v. Ramdhar Singh (2001 (2) CTC 617)
- 8) Venkataswami Chettiar, V.P. v. A. Mariasusai (1997 (II) CTC 140)
- 9) Municipal Corporation of Delhi Vs. Pramod Kumar Gupta,

- 10) Prem Raj alias Prem Singh Vs. IIIrd Addl. Dist. Judge, and others,
- 11) Sagar Mahila Vidyalaya, Sagar Vs. Pandit Sadashiv Rao Harshe and others,
- 12) Janak Raj Vs. Gurdial Singh and Another,
- 13) Haldhar Prasad Singh Vs. Giridih Municipality and Others,
- 14) Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others,
- 15) Ram Juwan Vs. Devendra Nath Gupta,
- 16) Ahmedali Khan and Others Vs. State of Madhya Pradesh,
- 17) Badri Dass Vs. Labhu Mal,
- 18) Nisha Kanto Roy Chowdhury Vs. Smt. Saroj Bashini Goho,
- 19) Makhan Lal Jain and Another Vs. The Amrit Banaspati Co. Ltd. and Others,

6. According me, the accounts of the Petitioners became non-performing assets and the bank has taken action u/s 13(2) of the SARFAESI Act

followed by possession notice issued u/s 13(4). Having regard to the facts narrated above, in my opinion, the action of the bank in taking

proceedings u/s 13(2) and 13(4) of the SARFAESI Act, cannot be found fault with and the bank has correctly taken action as per the provisions

of the SARFAESI Act when the assets of the Petitioners became non-performing assets and therefore, the arguments of the learned Counsel for

the Petitioners that the action taken under the SARFAESI Act as per Sections 13(2) and (4) are not valid cannot be accepted. Having held that

the action taken by the first Respondent is legal, we will have to see the following points:

1) whether the bank has violated the provisions of Rules 8 and 9 of the Security Interest (Enforcement) Rules(hereinafter referred to as Rules

2002) while selling the property;

2) whether the non-observance of the procedure contemplated under Rules 8 and 9 as alleged by the Petitioners will vitiate the sale.

3) Whether Respondents 2 and 3 are stopped from going back on their words in refusing the accept the offer made by the Petitioners.

7. Point Nos. 1 and 2:

Mr. K.M. Vijay an, learned Senior Counsel appearing for the Petitioners submitted that as per Rule 8 (5) of the Rules 2002, the bank is entitled to

sell the property by following any of the methods stated in Rule 8(5) (a) to (d) of the Rules. According to the learned Senior counsel, the bank has decided to conduct public auction and public auction sale notice was published in the daily Dinamalar dated 23.5.2006 and also in another newspaper and as per the auction notice, the sale was to take place on 7.7.2006 and the reserve price for the factory land and building in S. No. 665 of an extent of 76 cents was fixed at Rs. 110 lakhs and the reserve price for the lands and factory building belonging to M/s. Pandiassituate at Thanakkankulam Village of an extent of 5.51 acres with building was fixed at Rs. 55 lakhs. Admittedly, on the auction date, there were no bidders and therefore, the auction was not conducted and therefore, without informing the Petitioners and without the knowledge of the Petitioners, the bank entered into a treaty with Respondents 2 and 3 and the properties were sold for a total sum of Rs. 1,23,10,000/= and even prior to the sale of the property on 8.12.2006, after getting permission from the bank, the Petitioners sold the machineries and the bus for a total sum of Rs. 43,00,000/= and that was remitted into their account and thereafter, without reducing the above said reserve price and without calling for public auction and without giving one month's notice as per Rule 8(6) of the Rules, 2002, the bank clandestinely entered into a private treaty with Respondents 2 and 3 and sold the properties and the properties in S. No. 665 of an extent of 76 cents was sold for Rs. 69 lakhs against the reserve price of Rs. 110/= lakhs and the properties of an extent of 5.51 acres was sold for a sum of Rs. 54 lakhs against the reserve price of Rs. 55 lakhs and as per the Division Bench of this Court in 2009 (5) CTC 385 (cited supra) and as per the provisions of Rule 9(2), when the property is sold for a price less than the reserve price, the same can be done only with the consent of the borrower and secured creditors and in this case, admittedly, the consent of the borrower wasn't obtained. Further, before entering into a private treaty with Respondents 2 and 3, as per Rule 8(6), the first Respondent ought to have served a notice of 30 days to the Petitioners and admittedly, the notice was not given and therefore, the sale of the properties in favour of Respondents 2 and 3 by the first Respondent is not valid. The learned Senior Counsel further submitted that the writ petition was posted on 20.2.2007 and Mr. Jayabalan, husband of the third Respondent and the father of the second Respondent, who is also a

practicing Advocate, appeared on behalf of Respondents 2 and 3 in court and represented in open court that if the Petitioners were willing to

pay Rs.1,49,23,061/= within three days, Respondents 2 and 3 would vacate the property in question and later it was agreed that the Petitioners

shall pay Rs. 1,41,00,000/= and the case was adjourned to 21.3.2007 for fixing the time for making payment and on 21.3.2007, it was

represented by the Petitioners that they would make payment on 24.3.27 and when the Petitioners presented the demand draft on 24.3.2007, Mr.

Jayabalan, learned Counsel for Respondents 2 and 3 refused to accept the same and therefore, the conduct of the Respondents in making the offer

of acceptance for Rs.1,41,00,000/= in full quit and the same was accepted by the Petitioners and the case was adjourned to 24.3.2007 for making

payment, a contract came into existence and therefore, Respondents 2 and 3 cannot go back on their words and they are stopped from their going

back on their words and they are bound to accept a sum of Rs.1,41,00,000/= and deliver possession of the property.

8. On the other hand, Mr. Gnanadesikan, learned Counsel for Respondents 2 and 3 submitted that once the sale has become final, the same

cannot be set aside by filing a writ petition and if at all, the Petitioners are aggrieved by the sale, they will have to file application before the Debt

Recovery Tribunal by invoking the provision of SARFAESI Act and therefore, the writ petition is not maintainable and relied upon the judgment

reported in Chidambaram Manickam, K. v. Shakeena (2008 (1) CTC 660). Mr. Gnanadesikan, learned Counsel for Respondents 2 and 3 also

submitted that the understanding between the parties was that the Petitioners have to make payment on or before 21.3.2007 and as they did not

make the payment on that day, the agreement between the parties came to an end and it cannot be enforced thereafter and therefore, when the

Petitioner attempted to make payment on 24.3.2007, it was rightly refused by Respondents 2 and 3 as it was made beyond the period agreed and

therefore, there is no question of estoppel against Respondents 2 and 3. The learned Counsel for the first Respondent also supported

Respondents 2 and 3.

9. We shall first see whether the private treaty entered into between Respondents 2 and 3 is valid in law. As per Rule 8(5), the first Respondent

can sell the property by obtaining quotations from the persons dealing with similar secured assets or others interested in buying such assets or by

inviting tenders from public. These two options were not followed and admittedly, the property was attempted to be sold by conducting public

auction and as there were no bidders, the property could not be sold by public auction. Thereafter, on 8.12.2006, the first Respondent entered

into a private treaty with Respondents 2 and 3 for the sale of the property on the same date, Respondents 2 and 3 paid the amount aforementioned

and whether the sale of the properties by entering into private treaties on 8.12.2006 is in accordance with rules is the subject matter of this writ.

Admittedly, the bank is entitled to enter into private treaty for sale of the properties.

10. It is further not in dispute that the reserve price for the 76 cents of property in S. No. 665 part was fixed at Rs. 110/= lakhs and by entering

into a private treaty, it was sold for a sum of Rs. 69,00,000/=. As per the proviso to Rule 9(2), no sale shall be confirmed when the amount

offered by the sale price is less than the reserve price. The second proviso to Rule 9(2) further provides that if the authorized officer fails to obtain

a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor, have the sale at such price. Therefore, a

reading of the two provisos to Rule 9(2), would make it clear that when the sale price is less than the reserve price, a sale can be effected with the

consent of the borrower and the secured creditor. In this case, as stated supra, the reserve price for 76 cents was fixed at Rs. 110 lakhs but the

first Respondent entered into a private treaty for a sum of Rs. 69,00,000/= only. Therefore, when the secured creditor fails to obtain a price higher

than the reserve price, the sale can be confirmed however with the consent of the borrower and secured creditor and admittedly, the consent of the

borrower was not obtained while effecting the sale. As stated supra, the land of an extent of 5.51 acres was sold for Rs. 54,10,000/= against the

reserve price of Rs. 55,00,000/= and the land of an extent of 76 cents was sold for Rs. 69,00,000/= against Rs. 110 lakhs. Therefore, the sale of

properties effected by the first Respondent for a consideration below the reserve price without the consent of the borrower is not in accordance

with the provisions of Rule 9(2).

11. In the judgment reported in 2009(5) CTC 385 (citedsupra), this fact has been dealt with by the Division Bench of this Court and the

Honorable Division Bench, after incorporating Rule 9(2) held as follows:

8. Since the question raised would depend upon interpretation of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, the relevant

provisions are extracted hereunder:

9. Time of sale, issue of sale certificate and delivery of 17 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

Authorized 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 18 price, specified under Sub-rule (5) to Rule 8: Provided further that if the authorized 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.

(Emphasis added)

9. A bare reading of Rule 9(2) makes it clear that three contingencies can arise when an auction takes place. Those are, (i) the bidder offers an

amount, which is more than the upset price, (ii) the bidder offers an amount, which is less than the reserve price, and (iii) the bidder offers an

amount, which is neither less nor more than the upset price. If the amount offered by the highest bidder is more than the upset price fixed under

Rule 8(5) the sale shall be confirmed in favour of such higher bidder. This however, is subject to confirmation by the Secured Creditor. If the bid

amount is less than the upset price, no sale shall be confirmed as contemplated under the first proviso to Rule 9(2). The second proviso makes it

clear that if the authorized officer fails to obtain a price higher than the reserve price, the sale can be confirmed only with the consent of the

borrower and the secured creditor. It is thus obvious that if the price offered is same as the reserve price, it cannot be said that the Authorized

Officer has obtained a price higher than the reserve price. A combined reading of

all the provisions contained in Rule 9(2) makes it clear that if the price offered is higher than the reserve price, it shall be confirmed by the Authorized Officer, but such confirmation is subject to the further confirmation by the Secured Creditor. If however, price offered is not higher than the reserve price, which means it may be on par with the reserve price or less than the reserve price, the auction can be confirmed only with the consent of the borrower and the Secured Creditor and not otherwise. Learned Counsel for the Bank by relying upon the decision of the Supreme Court, has submitted that in normal circumstances, reserve price is fixed to indicate the minimum price at which property can be sold. We do not think that such a contention can be accepted in view of second proviso to Rule 9(2) is to the effect that if the Authorized Officer fails to obtain a price higher than the reserve price it can be confirmed only with the consent of the Secured creditor as well as the borrower and not bereft of such consent. But the learned Counsel for the Bank as well as purchaser had submitted that since the proceeding u/s 17 is pending, the question now raised in the writ petition as well raised in the proceedings and in view of such existence of such alternative remedy, the writ petition should not be entertained.

12. The Honorable Division Bench further held that secured creditor acts as a trustee and he has to take into consideration the interest of the borrower while selling the property and if the properties were sold for a good price, the balance amount can be refunded to the borrower and therefore, while selling the property, the provisions of Rule 9 have to be strictly adhered and held as follows:

22. A fair reading of the provisions contained in Rule 9 makes it clear that if the highest bid is higher than the upset price, such highest bid shall be confirmed by the authorized officer in favour of the highest bidder, which, however, is subject to confirmation by the secured creditor. This provision is apparent from the provisions contained in Rule 9(2). At that stage, obviously a discretion is given to the secured creditor to accept the highest bid or even go in for a fresh bid.

For example, if the secured creditor, on the basis of the relevant materials, comes to a conclusion that the highest bid offered, even though higher than the reserve price, does not reflect the true market value and there has been

any collusion among the bidders, the secured creditor in its discretion may refuse to confirm such highest bid notwithstanding the fact that the highest bid is more than the upset price. This is because the secured creditor is not only interested to treat its debt, but also expected to act as a trustee on behalf of the borrower so that the highest possible amount can be generated and surplus if any can be refunded to the borrower. The first proviso in no uncertain terms makes it clear that no sale can be confirmed by the authorized officer, if the amount offered is less than the reserve price specified under the Rule 8(5). However, the subsequent proviso gives discretion to the authorized officer to confirm such sale even if the bid is less than the reserve price, provided the borrower and the secured creditor agree that the sale may be effected at such price which is not above the reserve price. This is obviously so because the property belongs to the borrower and as security for the secured creditor and both of them would be obviously interested to see that the property is sold at a price higher than the reserve price. However, if both of them agree that the property can be sold, even if it has not fetched a price more than the reserve price, the authorized officer in its discretion may confirm such auction.

13. Therefore, as per the above judgment a sale by the secured creditor viz., the first Respondent in favour of Respondents 2 and 3 for a price less than the reserve prices against the provisions of Rule 9(2) and therefore, the sale is not valid and no title passes and the sale is liable to be quashed.

14. In the same judgment, the Honorable Division Bench also discussed about the alternate remedy and held that the availability of alternative remedy is not a bar in filing a writ to quash the sale and held that the writ is maintainable. Therefore, in my opinion, even though the Petitioners, have not availed the alternative remedy, as per Section 17 of the SARFAESI Act, having regard to the fact that the sale was not conducted in accordance with the provisions of Rule 9(2), the sale is not valid and therefore, it is liable to be quashed.

15. Further, as per Rule 8(6), thirty days notice should be given to the borrower before taking action as per Rule 8(5). In this case, the auction notice was issued on 23.5.2006 informing the date of auction as 7.7.2006. On that date, the sale could not take place as there were no bidders.

Thereafter, the bank entered into a private treaty on 8.8.2006 and a reading of

Rule 8(5) and (6), in my opinion, makes it clear that when the bank resorts to another way of selling the property, thirty days notice ought to have been given to the borrower as per Rule 8(6). Further, as per Rule 8(8), when a sale is conducted by any other method otherwise public auction or public tender, it shall be on such terms as may be settled between the parties in writing.

16. Under Rule 9(2), if the sale price is higher than the reserve price, the sale shall be confirmed in favour of the purchaser subject to the confirmation by the secured creditor and when the sale price is less than the reserve price, it can also be confirmed with the consent of the borrower and the secured creditor. Therefore, a reading of Rule 8(8) and 9(2) would also make it clear that in case of sale by obtaining quotation

from the persons dealing with similar secured assets or others interested in buying such assets or by private treaty as contemplated under Rule 8(5)

(a) and (d), the sale shall be on such terms as may be settled between the parties in writing and the phrase "between the parties in writing" must

only mean the borrower, secured creditor and the prospective purchasers.

17. It cannot be contended that the consent of the borrower is not necessary for effecting the sale by obtaining quotation as per Rule 8(5)(a) or by

entering into private treaty as per Rule 8(5) as it would give a freehand to the secured creditor to sell the property for any sum detrimental to the

interest of the borrower and as held by the Division Bench of the Honorable in 2009 (5) CTC 385 cited supra, the secured creditors are in the

position of the trustee for the borrower and therefore, before finalizing the private treaty, the consent of the borrower has to be obtained for the

simple reason that the borrower must be aware of the sum for which the property is to be sold.

18. Further, as per Rule 8(6), thirty days notice ought to have been given when the sale is to be effected by any of the modes under Rule 8(5) (a)

to (d) and admittedly, no notice was given as per Rule 8(6) and therefore, there's violation of Rule 8(6) and 8(8) in conducting the sale and on that

ground also, the sale is liable to be quashed.

19. Point No. 3:

Next we shall see whether Respondents 2 and 3 are stopped from going back on their commitment. According to me, the provisions of Order

XXIII Rule 1 will not be applicable to the facts and circumstances of this case as there was no compromise entered into in writing between the

parties and that was presented before the court. It is stated by the Petitioners that there was a demand of Rs. 1,49,23,061 by Respondents 2 and

3 and it was agreed between the parties that the Petitioners shall pay Rs. 1,41,00,000/= and on such payment Respondents 2 and 3 agreed to set

aside the sale and give possession of the properties. It is contended by Respondents 2 and 3 that though they agreed to receive Rs.

1,41,00,000/=, it was not an absolute offer and they agreed to receive the same provided the said sum is paid on or before 21.3.2007 and the

amount was not paid on 21.3.2007 and therefore, they're not bound by the offer made by the Petitioners.

20. To find out whether Respondents 2 and 3 agreed to receive Rs. 1,41,00,000/= if made on or before 21.3.2007 or on a later date, we will

have to see the orders passed by this Court on those two days. Admittedly, the case was listed on 20.3.2007 and according to Respondents 2

and 3, the Petitioners offered to make payment on 21.3.2007 and on that date, they did not make payment and therefore, they're not bound to

honor the offer. It is seen from the orders passed in M.P. No. 3 of 2007 dated 21.3.2007, that there was no such condition that the amount must

be paid on or before 21.3.2007 and on 24.3.2007, the following order was passed by this Court:

Mr. B. Saravanan, learned Counsel appearing on behalf of the Petitioners, Mr. N. Murugesan, learned Counsel appearing on behalf of the first

Respondent Bank and Mr. K.P. Thiagarajan, learned Counsel appearing on behalf of the second and third Respondents have admitted the fact

that it was agreed before this Court that the Petitioners shall pay the amount of Rupees One Crore and Forty One Lakhs to the second and third

Respondents and on receipt of which the second and third Respondents would vacate the property, which is the subject matter in the present Writ

Petition.

21. Therefore, from the above order, it is made clear that Respondents 2 and 3 admitted that they agreed to receive Rs. 1,41,00,000/= in full quit.

If really, Respondents 2 and 3 had agreed to receive the said sum of Rs. 1,41,00,000/= only on or before 21.3.2007 and not later, they would have

informed the court that the offer lapsed as the payment was not made on 21.3.2007 and they will not accept the commitment if the amount is paid

later. As per order dated 24.3.2007, if Respondents 2 and 3 had any reservation about the receipt of Rs. 1,41,00,000/=, they would have

mentioned ad that would have been incorporated in the said order.

22. Further, on 23.4.2007, another order was passed in the writ petition and as per the said order, both the parties counsel submitted that there is

a chance of amicable settlement in the matter and therefore, the court directed the matter to be posted before the Mediation Centre. If really

Respondents 2 and 3 had stated that their commitment to receive Rs. 1,41,00,000/= will lapse on the failure on the part of the Petitioners to make

payment on or before 21.3.2007, they would not have submitted before this Court that there is every likelihood of compromise. Therefore, from

the conduct of the parties and from the orders passed in this writ petition, I am of the opinion that Respondents 2 and 3 have agreed to receive the

sum of Rs. 1,41,00,000/= in full quit for setting aside the sale and to deliver possession of the property and admittedly, the Demand Drafts were

also made ready for the said sum on 24.3.2007 and therefore, the offer made by Respondents 2 and 3 was accepted and the Petitioners also

acted on the said offer and made ready the sum of Rs. 1,41,00,000/= and therefore, Respondents 2 and 3 are stopped from going back from their

offer.

23. The law of estoppels has been discussed in detail in the judgment in B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others, and

the Honorable Supreme Court held that

18. Though estoppels is described as an ere rule of evidence, it may have the effect of creating substantive rights as against the person stopped.

Unstopped, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppels

by negligence or by conduct or by representation or by holding out ostensible authority.

19. Estoppels, then, may itself be the foundation of a right as against the person stopped, and indeed, if it weren't so, it is difficult to see what

protection the principle of estoppels can afford to the person by whom it may be invoked or what disability it can create in the person against

whom it operates in cases affecting rights. Where rights are involved estoppels may with equal justification be described both as a rule of evidence

and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of Depuru Veeraraghava Reddi Vs. Depuru

Kamamma and Another, where Vishwanatha Sastri, J., observed:

Estoppels though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or

defeat rights which would not exist and be taken away but for that doctrine....

20. Of course, an estoppels cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. But where such

is 32not the case a right may be claimed as having come into existence on the basis of estoppels and it is capable of being enforced or defended as

against the person precluded from denying it.

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32. In view of the factual conclusions arrived at by the High Court, which are perfectly in order, the appeals are bound to fail. The rule of estoppels

has clear application, and in view of this finding it is not necessary to go into the question whether Explanation 6 of Section 11 Code of CPC has

any application or not.

24. The Honorable Supreme Court relied upon the earlier Supreme Court judgments and law relating to estoppels dealt by Arthur Casper's under

the title ""Conduct of Indifference or Acquiescence"" and held as stated above. Therefore, Respondents 2 and 3 are also bound by their conduct

and they are bound to accept the amount agreed to be paid by the Petitioners.

25. Though I held that the sale of the properties by the first Respondent in favour of Respondents 2 and 3 are vitiated by reason of not following of

the mandatory provisions of Rules 8(5), 8(6) and 9(2), as per the judgment of the Division Bench in 2009 (5) CTC 385 citedsupra, the aforesaid

bank may be permitted to conduct further auction. But, in this case, as Respondents 2 and 3 have agreed to receive Rs. 1,41,00,000/= in full quit

and that was also accepted by the Petitioners and also made the amount ready, Respondents 2 and 3 are bound to receive the same. Further, the

amount was made ready by the Petitioners in the month of March 2007. Therefore, there is no need to permit the first Respondent to conduct

further auction. As the Petitioners have the benefit of money with them, they're liable to pay the said sum with interest at the rate of 9% per annum

from April 2007. The Petitioners are granted time to make payment of the said amount within a period of thirty days from the date of receipt of

copy of this order. The sales in favour of Respondents 2 and 3 shall be set-aside on payment of the aforesaid sum of Rs. 1,41,00,000/=with

interest at 9% per annum from April 2007. If Respondents 2 and 3 refuse to receive the same, the Petitioner shall deposit the amount with the first

Respondent bank.

In the result, the writ petition is allowed. No costs. The connected miscellaneous petitions are closed.