
(2007) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2755 of 2007

Shabbir Ahmed Khan

APPELLANT

Vs

Central Bank of India and Another

RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14
Sales of Goods Act, 1930 — Section 64, 64(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 3, 8, 8(5), 8(6), 9

Citation : AIR 2008 AP 85 : (2008) 2 ALD 493 : (2008) 3 ALT 277 : (2008) 4 BC 155

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Kodanda Ram, for the Appellant; C.H. Sihiva Reddy, for C.V. Rajeeva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Court Issued Rule nisi on 19-2-2007.

2. Heard Sri C. Kodandaram, learned Counsel representing the writ petitioner, and Sri Ch. Shiva Reddy representing Sri C.V. Rajeeva Reddy, learned Counsel representing the respondents.

3. Sri C. Kodandaram, learned Counsel representing the writ petitioner, had taken this Court through the respective pleadings of the parties and also had drawn the attention of this Court to the relevant rules governing the field and would maintain that even in the light of Section 64 of the Sale of Goods Act, 1930 since the process of putting and process of sale had been completed, a right had accrued to the writ petitioner, and hence, the Banking Institution cannot take such a stand so as to avoid the confirmation of sale, and hence, the writ petition to be allowed. The counsel also placed reliance on certain decisions.

4. On the contrary, Sri Shiva Reddy, learned Counsel representing Sri C.V. Rajeeva Reddy, learned Counsel for the respondents, had taken this Court through the relevant provisions of the Rules and would explain that the Forest Officer had conducted the sale, but on verification, it was found by the concerned Committee that all the guarantors were not served and in the light of the same, the Banking Institution had taken such a decision, even otherwise, the directions prayed for in the writ petition cannot be granted and the writ petition is liable to be dismissed.

5. Heard the counsel.

6. Sri Shabbir Ahmed Khan, the writ petitioner, filed the present writ petition for a Writ of Mandamus declaring the action of the respondents in not issuing sale certificate in terms of Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 (hereinafter in short referred to as "the Rules" for the purpose of convenience) after accepting the balance bid price In terms of the auction sale confirmation letter dated 10-1 -2007 issued by the 2nd respondent with respect to the land in Plot No. 198, 199, 198/1 and 199/1" in R.S. No. 153 and 154 situated at Jawahar AutoNagar, Patamata, Vijayawada admeasuring an extent of 1997 sq. yards as arbitrary, Illegal, contrary to terms of the tender and provisions" of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter for short referred to as "the Act" for the purpose of convenience) and the Rules and in violation of Article 14 of the Constitution of India and consequently direct the 2nd respondent to issue sale certificate after receiving the balance bid price and pass such suitable orders.

7. The petitioner, in his affidavit filed in support of the writ petition, averred that the 2nd respondent-the Regional Manager is the authorized Officer appointed under the provisions of the Act for enforcing the provisions of the Act. Accordingly, the 2nd respondent u/s 13(2) read with Rule 3 of the Act and the Rules made thereunder issued demand notice dated 23-8-2005 calling upon Sri K. Venkata Rayudu, Sri K. Kishore, Sri K. Siva Kumar, Smt. K. Pankaja Valli, Sri K. Rama Mohan Rao and Miss P. Radha, all residents of Vijayawada, who were guarantors to M/s. Saswat Agencies, M/s. Rithvik Enterprises and M/s. Prakrit Motors to repay the loan amount. As neither the borrower nor the guarantors paid the amounts, the 2nd respondent took possession of the secured asset in Plot No. 198, 199, 198/1 and 199/1 in R.S. No. 153 and 154, Jawahar Autonagar, Patamata, Vijayawada in an extent of 1997 sq.yards. Subsequently, the 2nd respondent again in exercise of the power u/s 13(4) of the Act read with Rule 8 issued a notice giving 30 days time to the borrower to clear the liabilities and redeem the property mortgaged to the Bank. Further, it is averred that since none of the borrower or guarantors came forward to pay the amounts within the time prescribed under the Act, the 2nd respondent having obtained the estimated value of the mortgaged property proposed to sell the same in exercise of powers under Rule 8(5) of the Rules. Accordingly, the 2nd respondent issued

public notice on 10-12-2006 in Hindu and Eenadu Newspapers calling for tenders. The terms and conditions of sale as can be seen from the Public Notice were that the reserve price was fixed as Rs. 1,41,00,000/- and that the intending bidders should pay 10% of the reserve price as EMD before 10-1-2007 and that the tenders would be opened on 10-1-2007 at 4.00 p.m. by the 2nd respondent. The terms further specify that the highest bidder shall be declared as successful tenderer who should immediately deposit 25% of the bid amount by way of advance inclusive of the EMD amount on the sale being confirmed in his favour and balance of the bid amount to be paid within 15 days thereafter.

8. Further, the petitioner, in his affidavit, averred that he along with Sri B.V. Siva Chandra Rao jointly participated in the auction on 10-1-2007 and offered Rs. 1,42,50,000/- as his tender. On opening of the tenders, the 2nd respondent declared the offer given by the petitioner as highest and accordingly, confirmed the auction in his favour vide letter dated 10-1-2007. On confirmation of the auction, the petitioner was called upon to pay the 25% of the bid amount inclusive of EMD amount. Accordingly, the petitioner paid Rs. 27,00,000/- towards balance 25% of the bid amount. The 2nd respondent in letter dated 10-1-2007 called upon the petitioner to pay the balance 75% bid amount on or before 24-1-2007. The petitioner on 24-1-2007 approached the 2nd respondent and requested to receive the balance bid amount vide letter dated 24-1-2007. However, to the utter surprise of the petitioner, the 2nd respondent vide letter dated 24-1-2007 informed the petitioner that his higher authorities did not confirm the auction sale and as such he declined to receive the balance bid amount. The petitioner once again vide letter dated 27-1-2007 requested the 2nd respondent to receive the balance bid amount and convey the property in his favour. The 2nd respondent strangely vide letter dated 9-2-2007 informed the petitioner that the auction sale was not confirmed so far as his higher authorities did not confirm the same and informed the petitioner to receive the amount paid already. The 2nd respondent even in this letter did not state the reasons for not receiving the balance 75% bid amount, but strangely reiterated that his authorities have not confirmed the auction contrary to the confirmation letter already issued. It is also averred that the 2nd respondent is the authorized officer under the Act, as such, question of his higher authorities accepting the bid does not arise. The 2nd respondent is alone vested with the power to confirm the auction sale and having once confirmed the auction in favour of the petitioner, the 2nd respondent is precluded in stating that the same has to be again confirmed by his higher authorities. Even otherwise, the discretion given to the 2nd respondent under the Act to reject the auction price is also very limited. The proviso to Rule 9(2) of the Rules specifies the circumstances under which a sale can be rejected and admittedly, the present case does not fall under the exceptions carved out in the proviso. It is stated that the respondents having confirmed the auction under Rule 9(2) of the Rules should have proceeded under Rule 9(6) of the Rules for issuance of Sale Certificate after receiving the balance Bid Price. There is no reason why the confirmed sale should be stopped at the

concluding stage, as such, the action of the respondents in not acting upon the auction confirmation letter dated 10-1-2007 is arbitrary, illegal and contrary to the terms and conditions of Tender and ultra vires the provisions of the Act and in violation of Article 14 of the Constitution of India.

9. In the counter affidavit on behalf of the respondents, the Regional Manager, Central Bank of India, Regional Office at Vijayawada has sworn to the affidavit. It is averred that as per the Rules of the Act, once the auction is conducted, the highest bidder shall deposit one fourth of the bid amount inclusive of the EMD immediately and the balance 75% of the bid amount shall be paid within 15 days. Further, as per the aforesaid Rules, on confirmation of sale by the secured creditor and if the terms of sale have been complied with, the Authorised Officer shall issue a Certificate of sale. Therefore, it has been stipulated in the notice of sale published in the newspapers on 10-10-2006 that the sale is subject to confirmation by the Bank (Secured creditor). In this case, the petitioner and Sri D. Siva Chandra Rao participated jointly and their joint bid is the highest bid. Since they are the highest bidders, the Branch Manager of Governorpet Branch addressed a letter dated 10-1-2007 to the petitioner and Sri D. Siva Chandra Rao jointly stating that they are the highest bidders and brought to their notice about the payments to be made as per the terms of the tender sale. The said letter cannot be termed as auction confirmation letter and the sale has not yet been confirmed by the secured creditor in accordance with the Rules. Further, it is stated that the notice, dated 23-8-2004, was issued to the borrowers u/s 13(2) of the Act and as they failed to repay the entire amount due to the Bank within 60 days, the possession notice u/s 13(4) of the Act was issued to the borrowers and guarantors and the respondent Bank had taken symbolic possession of the immovable properties covered under the said notice including the impugned property. Notice was issued under Rule 8(6) of the Rules giving 30 days time to the borrowers for sale of the impugned property. But inadvertently, the said notice, under Rule 8(6) of the Rules, could not be issued by the Respondent Bank to the owners of the said property, who are also some of the guarantors. Before confirmation of the sale, the secured creditor verified and scrutinized all the records and found that the notice under Rule 8(6) was not issued to the aforesaid owners of the impugned property who are also some of the guarantors. Therefore, the secured creditor has taken a decision not to confirm the sale. Further, it is averred that as per Rule 9(2) of the Rules, the sale shall be confirmed in favour of the purchaser who has offered highest sale price in his sale bid to the authorized officer and shall be subject to confirmation by Secured Creditor. Further, as per Rule 9(6) of the Rules, on confirmation of sale by the secured creditor and if the terms of payment are complied with, the authorized officer shall issue a certificate of sale. The authorized officer and secured creditor are not one and the same authority. Therefore, it has been stipulated in the notice of sale published in the newspapers on 10-12-2006 that the sale is subject to confirmation by the Bank (Secured creditor). The 2nd respondent by letter dated 9-2-2007 brought to the notice of the petitioner that the higher authorities

of the Bank have not confirmed the sale, which is in accordance with the notice of sale published in newspapers on 10-12-2006 that the sale is subject to confirmation by the Bank. A copy of the said letter was marked to Sri B.V. Sivachandra Rao, who is the joint bidder. It is also stated that the public notice for sale of the impugned property was published on 10-12-2006 in Hindu and Eenadu Newspapers calling for tenders. According to the said notices, reserve price was fixed at Rs. 1,41,00,000/- and it was categorically stated that sale is subject to the confirmation by the Bank and authorized officer reserves the right to accept or reject any tender without assigning any reason. Knowing fully well the terms and conditions of the notice for sale, the writ petitioner and Sri B.V. Sivachandra Rao jointly participated and offered Rs. 1,42,50,000/- as their bid amount. Since the amount offered by the writ petitioner and the said Sri B.V. Sivachandra Rao jointly is the highest bid, they were informed to deposit 25% of the bid amount including EMD amount. They have jointly paid the said amount of 25% of the bid amount. As the writ petitioner and the said Sri B.V. Sivachandra Rao are the highest bidders jointly; both of them were informed jointly to pay the remaining 75% of bid amount before 24-1-2007 by a letter dated 10-1-2007 issued by the Branch Manager, Governorpet Branch, Vijayawada. But, at no point of time, the secured creditor has confirmed the auction sale as alleged by the petitioner in the affidavit. In the meantime, one of the joint bidders namely Sri B.V. Sivachandra Rao has informed the respondents on 11-1-2007 that he was dropping from the bid in favour of the petitioner. It is also stated that the higher authorities of the respondents have considered the letter, dated 11-1-2007, of Sri B.V. Sivachandra Rao and the statutory notices, which were issued to the borrower and the guarantors, and have finally decided not to confirm the auction. Accordingly, the writ petitioner and Sri B.V. Sivachandra Rao were informed by the Branch Manager, Governorpet Branch, Vrjayawada by letter dated 24-1-2007 that his higher authorities did not confirm the auction sale, Further, the 2nd respondent by letter dated 9-2-2007 has also informed the petitioner that the higher authorities of the respondent did not confirm the sale. In the said letter, it has been categorically mentioned that as the petitioner and Sri B.V. Sivachandra Rao are the joint bidders of the impugned property, dropping one of the joint bidders in favour of the other does not arise. Hence, it is stated that the writ petition filed by the petitioner is liable to be dismissed on this ground alone. In the aforesaid circumstances, the respondent Bank has also offered to refund the amount deposited by both of them. Further, it is stated that the respondent Bank has got every right to reject the tender or cancel the auction at any stage without assigning the reasons as per sale notice dated 10-12-2006 published in newspapers. Further, it is stated that the Secured Creditor I.e. Zonal Office of the Bank is the ultimate authority to decide and confirm the sale through the authorized officer. The authorized officer is only the authority to initiate and proceed under the Act as per the directions of the Secured Creditor I.e., Zonal Office of the Bank. As per the Sub-rule (2) of Rule 9 of the Rules, it is categorically stated that the offer of the highest bidder to purchase the secured asset shall be subject to the confirmation by the secured

creditor. Therefore, since Zonal Office of the bank is the highest authority who is the secured creditor, the respondent has informed that the sale is not confirmed by them. Unless the sale is confirmed by the secured creditor, the auction purchaser has no right to make any claim for sale; of the secured assets and for issuance of the sale certificate in his favour under the Act and the Rules. Further, the specific stand had been taken that if any person including the borrower is aggrieved by any of the measures taken by the Secured Creditor u/s 13(4) of the Act, he may approach the Debt Recovery Tribunal u/s 17 of the Act. In the light of the same, it is stated that there is an effective alternative remedy and the writ petition is liable to be dismissed.

Rule 8 of the Rules dealing with sale of immovable secured assets reads as hereunder:

(1) Where the secured asset is an immovable property, the authorized officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in Sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorized officer.

(3) In the event of possession of immovable property is actually taken by the authorized officer, such property shall be kept in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorized officer shall take steps for preservation and protection of secured assets and Insure them, if necessary, till they are sold or otherwise disposed of.

(5) Before effecting sale of the immovable property referred to in Sub-rule (1) of Rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public action; or (d) by private treaty.

(6) The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under Sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include:

- (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
 - (b) the secured debt for recovery of which the property is to be sold;
 - (c) reserve price, below which the property may not be sold;
 - (d) time and place of public auction or the time after which sale by any other mode shall be completed;
 - (e) depositing earnest money as may be stipulated by the secured creditor;
 - (f) any other thing which the authorized officer considers it material for a purchaser to know in order to judge the nature and value of the property.
- (7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorized officer deems it fit, put on the web-site of the secured creditor on the Internet.
- (8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

Rule 9 of the Rules dealing with time of sale, issue of sale certificate and delivery of possession etc. reads as hereunder:

- (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 price, specified under Sub-rule (5) of Rule 9:

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.

- (3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five percent of the amount of the sale price, to the authorized officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in Sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorized officer may, if thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorized officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in Sub-rule (7) above.

(10) The certificate of sale issued under Sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

Section 64 of the Sale of Goods Act reads as hereunder:

In the case of sale by auction (1) where goods are put up for sale in lots, each lot is prima, facie deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the

seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price.

(6) if the seller makes use of pretended bidding to raise the price the sale is voidable at the option of the buyer.

10. Emphasis was laid on Rule 8(6) and Rule 9(2) of the Rules specified above. Further, strong reliance was placed on the decision of *Jai Bhawani Timber Vs. State of Madhya Pradesh*, wherein, the Division Bench of Madhya Pradesh High Court observed as hereunder:

(10) It is not in dispute that the D.F.O. in respect of all the lots had fixed a reserve price and he alone was competent: to accept or reject the bid. It is also not in dispute that the relation to teak lots, on the relevant date of auction, he was competent even "to accept the bid below 10% of the upset price. On a conjoint reading of the above quoted auction-conditions, it is clear to us that the auction sales were complete on announcement of the closure of auction by the D.F.O. and by permitting the successful bidder to sign the bid-sheets. That is the necessary legal result of the provisions of Section 64 of the Sale of Goods Act, 1930 in the absence of any express provision to the contrary in the terms and conditions of the auction. It is relevant to note the following words used in condition No. 9:- "the successful bidder shall immediately after acceptance of his bid sign the bid-sheet in respect of the lot knocked down in his favour..."the above express language used in condition No. 9 clearly stipulates that signing of bid-sheet by the bidder is to be done only after the auctioning-authority accepts the bid. The act on the part of the auctioning authority in permitting the highest bidders to sign the bid-sheets in respect of their concerned lots, amounts to acceptance of their bids.

(11) Learned Counsel for the respondents laid such emphasis on the fact that none of the bid-sheets contains signatures of the D.F.O. at the appropriate bottom portion of the sheet. The contention is that the sales may be completed only the D.F.O. signing the bid-sheet in token of acceptance of the bids. The above contention, in our opinion, has no legal force and gets no support from the terms of the auction conditions. The auction-conditions nowhere provide that signing of bid-sheet by the highest bidder is a formality to be observed so as to bind him at his bid, after acceptance of the bid by the auctioneer. Postponement of signing or non-signing of bid-sheet by the auctioneer, after closures of the auction, is of no legal consequence and the sale is completed on signing of the bid-sheet by the bidder, as provided in Section 64 of the Act. The Division Bench case of *Darshan Singh v. State of M.P.* M.P. No. 2881, decided on 30-3-81, is on converse facts. There, the sales were held complete, although the bidders, who were willing to sign the bid-sheet, had not signed them. See the following

observations in *Barshan Singh's* case (supra): "the learned Government Advocate submitted that the petitioners did not immediately after acceptance of the bids sign the bid-sheets in accordance with Clause 9 of the terms and conditions of auction (annexure-A). This argument, however, cannot be accepted for the simple reason that it is not pleaded in the return that the petitioners declined to sign the bid-sheets after acceptance of the bids. This is also not one of the reasons mentioned in the return for refusing to give effect to the sales made in favour of the petitioners.

11a. Learned Counsel for the respondents in support of his contention laid much stress on the contents of condition No. 11 of the auction notice, to contend that it is only on signing of bid-sheets by the D.F.O. that the sales should be held as complete. Interpretation placed on condition No. 11 by the respondents does not appeal to us at all and the contention cannot be accepted. Condition No. 11 cannot be read in isolation of other conditions and should be read conjointly with those preceding and following it. Particularly, condition No. 11 has to be read in conjunction with condition No. 10, which immediately precedes it. Two conditions Nos. 10 and 11 use the words "competent authority", which is an authority other than the D.F.O. who is the auctioneer in every auction sale. The above two conditions lay down that where the D.F.O. is incompetent to accept the bid, being beyond his pecuniary powers, acceptance of bid by him, will be subject to the sanction and eventual acceptance by the competent authority. It is in respect of such auction-sales, which are beyond the power of acceptance of D.F.O. that signing of bid-sheet, by the competent authority signifies the acceptance of the bid. The argument of the respondents, therefore, cannot be accepted that signing of bid-sheets by the D.F.O. where he himself was competent to accept the bids, was necessary to complete the sale.

(12) The above interpretation placed by us on conditions Nos. 10 and 11 accords fully with the one placed on the same condition in the *Division Bench* case of this Court in *Darshan Singh* (supra). In our opinion, the sales were complete soon after announcement of completion of auction and by the act of D.F.O. In permitting the bidders, in whose favour the bids were knocked down, to sign the bid-sheets, he clearly signified his acceptance of the bids. Non-signing of the bid-sheets, in the above circumstances, by the D.F.O. was inconsequential in law and, therefore, did not permit the D.F.O. to repudiate the sales on his second thought. Even if, as contended by the respondents, the facts pleaded by them are accepted as true that the D.F.O. found that the petitioners had formed a "ring" in mutual benefit to avoid competition, the stage to withdraw the lots from sale or to reject the bids, was before making formal announcement of closure of auction and permitting signing of bid-sheets by the successful bidders. Once the bid was knocked down, the auction was announced as closed and bid-sheets were signed by the successful bidders, the sales were completed. The D.F.O. was thereafter powerless to retract his step and repudiate the sale for good or bad reason. This is the clear effect of the provisions of Section 64 of the Act and the contents of the auction conditions. Another interpretation, as sought to be placed

on behalf of the respondents, on the terms of auction-conditions, will result in loss of credibility of public auctioning-authorities, more so where the highest bidder is compelled to stand by the bid offered and to incur obligation with risk of forfeiture of his earnest money deposit and 25% of the bid-money, in case as successful bidder he retracts his bid. Auction condition No. 10 read with Section 64(2) of the Act bids the bidder to his offer. A corresponding obligation, to be found by the acceptance of bid by auctioning-authority with announcement of closure of auction, is a necessary intendment of law contained in Section 64 of the Act to lend credibility and fairness to the sales effected by public auction.

11. The principal contention advanced by the writ petition is that since the condition of deposit of amount had been complied with in accordance with the Rules, the legal right had accrued to the writ petitioner to get the confirmation of sale and the stand taken by the Bank that the authorized Officer is different from the secured creditor and subject to the confirmation of the secured creditor only, the sale had been conducted cannot be said to be a sustainable contention. The relevant portions of the decisions specified supra had been emphasized, it is no doubt true that the Banking Institution after the conduct of sale normally cannot go back, but there may be several Circumstances under which the Banking Institution on verification may come to the conclusion that there are certain defects, which may result in some further consequences or some litigation. It is also equally true that when the bidder or auction purchaser is prepared to take the property with such defects, if any, may be the Banking Institution may have to confirm the same, but it cannot be laid down as a broad proposition. In all circumstances, a bidder or an auction purchaser has a right of automatic confirmation of sale that will be subject to conditions only. Here is a case where the secured creditor on verification found the defect and was not inclined to confirm the same. This action of the secured creditor cannot be said to be not in accordance with law, since the publication made and also the Rules governing the field would clarify the situation.

12. It is no doubt true that in a particular given case, the Court may arrive at a conclusion that the action is arbitrary, when the Banking Institution is going back on totally untenable and unsustainable ground. When a particular confirmation may result in certain other ancillary litigations and when the secured creditor is not inclined to confirm the sale, the same cannot be found fault. Even otherwise, this Court is of the considered opinion that positive directions as prayed for normally cannot be issued by a writ Court, especially when the Banking Institution had taken such a stand in the counter-affidavit filed specifying the Rules and also the conditions made in the publication in this regard. Hence, this Court is thoroughly satisfied that the writ petition is devoid of merit. Accordingly, the writ petition shall stand dismissed. No order as to costs.