

(2006) 08 OHC CK 0045
In the Orissa High Court
Case No : Writ Petition (C) No. 4924 of 2005

Ullash Chandra Sahoo

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Rules, 2004 — Rule 8, 8(5), 8(6), 8(8), 9

Citation : (2007) 3 BC 659 : (2006) 2 OLR 517

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Advocate : S. Mohanty and H. Parida, for the Appellant; R.C. Das, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—Pursuant to the order dated 17.8.2006, Shri P.C. Das, Advocate and Notary, Cuttack appears in person and files an affidavit. Shri R.C. Das, Advocate for opp. party Nos. 1 to 3 has also filed an affidavit in Court today. Shri P.C. Das has stated in the affidavit that on 14.8.2006, he was mentally disturbed due to some family disturbance and at 11.00 A.M. in the morning, Shri R.C. Das, Advocate came to him and asked him to endorse a signature in the counter affidavit. He has further stated that Shri R.C. Das often got many affidavits sworn to before him and on the relevant date, he (R.C.Das) requested him to endorse his signature in the counter affidavit to be filed in the writ application and stated that the affidavit has been brought by him Shri (R.C. Das) with due permission of the Court. He being convinced, on good faith, endorsed the said affidavit to have been sworn to by Shri Pradumnya Kumar Rout, Authorized Officer of opp. party No. 1. He has admitted that it was a mistake. On stating the above, Shri P.C. Das has sought unconditional apology for the said mistake.

2. Similarly, Shri R.C. Das, Advocate in his affidavit has stated that under wrong

judgment and without prior permission of the Court, he managed to get the counter affidavit sworn to before the Notary Public on 14.8.2006, admitting that he has acted in an indisciplined manner which amounts to objectionable conduct. He has also sought unconditional apology undertaking that such mistake will not occur in future.

Thus, it would be seen that both Shri P.C. Das as well as Shri R.C. Das have candidly admitted the unauthorized and illegal act and have begged unconditional apology.

3. Considering the submissions of Shri P.C. Das, Advocate and Notary and Shri R.C. Das, Advocate who are members of this Bar and taking into account the fact which they have admitted and have begged unconditional apology with undertaking not to repeat such act, we close this matter with a word of caution to them. The personal appearance of Shri R.C. Das, Advocate and Notary is dispensed with.

4. With regard to the writ application, the petitioner has filed a rejoinder affidavit today in Court.

5. The petitioner has filed this writ application praying, inter alia, to quash the order/letter of opp. party No. 3 in Annexure-3 to the writ application and the sale notice dated 14.3.2005 in Annexure-4. The petitioner has further prayed for issue of a writ directing the opp. parties to sell the land in question described in paragraph-3 of the writ application, to the petitioner, forthwith.

6. The petitioner's case is that, opp. party No. 1 which is a Scheduled Bank exercising power under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") and the rules framed thereunder (hereinafter referred to as "the Rules") took over possession of the property mentioned in paragraph-3 of the writ application and issued a notice in the Oriya daily "The Samaja" on 13.1.2005 under Annexure-1 to the writ application, inviting offers in sealed covers from intending buyers/purchasers for purchase of the said property. In response to the said notice, the petitioner was one of the bidders who made his offer duly depositing earnest money. The reserve price fixed under Rule 8(5) of the Rules was Rs. 1.85 lakhs. The offers were opened on 16.2.2005 at 11.00 A.M. as per the sale notice. The opp. party No. 4 having offered Rs. 3,10,100/- and the petitioner having offered Rs. 2,51,101/-, became the highest and second highest bidders respectively. The opp. party No. 4 being accepted as the highest bidder, failed to deposit 25% of the price quoted by him immediately as per Rule 9(3) of the Rules. However, the opp. parties without accepting the offer of the petitioner and selling the property in his favour forthwith, kept silent. Being apprehensive, the petitioner on 19.2.2005 expressed his willingness to deposit the total sale price as quoted by him. Even then as his offer was not accepted, he issued a lawyer notice to the opp. parties 1 to 3. Further, by letter dated 12.3.2005 under Annexure-3, the opp. party No. 3 intimated the petitioner that the tender for sale

has been cancelled as per instruction of the competent authority of the Bank and the petitioner's earnest money of Rs. 10,000/- was being returned. Subsequently, on 15.3.2005, a fresh sale notice was issued under Annexure-4 to the writ application.

7. Mr. S. Mohanty, learned Counsel appearing for the petitioner submits that a bare reading of the Rule 9(3) of the Rules, would go to show that in every sale, the purchaser is required to pay immediately, 25% of the amount of the sale price to the officer conducting the sale and in default, the property shall be sold forthwith. He, therefore, submits that the said rule requires that in the event the highest bidder fails to deposit 25% of the sale price, immediately the officer conducting the sale is required to sell the property to the second highest bidder forthwith.

8. Mr. Mohanty vehemently contended that on interpreting Rule 9(3) of the Rules, it would be seen that the bank having not acted in accordance with the said provision, the subsequent sale, if made in favour of opp. party No. 4, is to be treated as a void sale and the bank should be directed to sell the property to the petitioner.

9. Mr. R.C. Das, learned Counsel appearing for the opp. parties 1 to 3 submits that he has mentioned in the counter affidavit filed on behalf of the said opp. parties that the highest bidder-opp. party No.

4 failed to deposit 25% of the bid amount immediately on the date of opening of the offers and the Bank, therefore, cancelled the auction and refunded the earnest money to all the three other participants while forfeiting the earnest money of the highest bidder. Thereafter, the Bank published a second sale notice on 14.3.2005. However, in the meantime, a stranger claiming to be a co-sharer of the said property filed a suit for partition bearing C.S. No. 55 of 2004 making the opp. party-bank as one of the defendants, before the Civil Judge (Junior Division), Bhubaneswar. The plaintiff in the said suit also filed an interim application seeking interim injunction. Further, the highest bidder-opp. party No. 4, on the auction being cancelled, filed a civil suit being C.S. No. 94 of 2005 against the bank before the Civil Judge (Junior Division), Bhubaneswar in which he also filed an interim application which was numbered as IA. No. 112 of 2005. By order dated 5.3.2005, the Civil Judge (Junior Division), Bhubaneswar in the said interim application directed the petitioner (opp. party No. 4 herein) to deposit the entire consideration money of Rs. 3,00,551/- within three days hence and further directed that in the event of such deposit, the bank shall transfer the suit land in his favour as early as possible. It was further directed that a sum of Rs. 10,000/-, which has already been deposited by the said petitioner (opp. party No. 4 herein) with the bank, shall be debited from the said consideration amount. It is further stated in the counter affidavit that due to the above order passed by the learned Civil Judge (Junior Division), Bhubaneswar in the interim application, the bank had no other option but to finalize the sale in favour of the said highest bidder-opp. party No. 4. He further submits that the opp. party No.

4 having deposited the amount as directed by the learned Civil Judge, the sale has been confirmed in his favour and possession of the property has been delivered.

10. The moot question, therefore, is as to whether the interpretation of Rule 9(3) of the Rules as made by Mr. S. Mohanty, learned Counsel appearing for the petitioner can be accepted to be correct. For better appreciation, it would be profitable to refer to various sub-rules of Rule 8 and Rule 9 of the Rules. Rule 8 of the Rules prescribes the mode and the steps to be taken by the authorized officer when the secured asset is an immovable property. In Rule 8(5), it is prescribed that 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 property or any part of such immovable secured asset by any of the method prescribed therein, such as, by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets or by inviting tenders from the public or by holding public auction or by private treaty.

11. In the proviso to Sub-rule (6) of Rule 8, it is provided that if the sale of the said 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 including the description etc. as mentioned therein.

12. However, Sub-rule (8) of Rule 8 prescribes that 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.

13. Rule 9 of the Rules is quoted hereunder:

9. Time of sale, issues of sale certificate and delivery of 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 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 per cent 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 he 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.

14. A bare reading of the above rule would go to show that the prescription in Sub-rule (3) is that on every sale of immovable property, the purchaser is required to deposit 25% of the amount of the sale price with the authorized officer immediately. It further prescribes that in default of such deposit, the property shall be forthwith sold again.

(emphasis supplied).

15. In our view, therefore, the phrase "sold again" cannot mean that on failure of the highest bidder depositing 25% of the sale price, the property should be sold

to the second highest bidder rather as it is a mandate in Sub-rule (2) quoted above that the sale shall be confirmed in favour of the purchaser who offered the highest sale price in his bid or tender or quotation or offer. Hence, if a harmonious interpretation of Sub-rule (2) and Sub-rule (3) of Rule 9 of the Rules is made, the inevitable conclusion would be that if the highest bidder fails to deposit 25% of the sale price immediately, the entire process of sale by public auction as prescribed in the proviso to Sub-rule (6) of Rule 8 shall have to be followed forthwith.

16. In view of our above conclusion, we are unable to accept the contention raised by Mr. Mohanty, learned Counsel appearing for the petitioner that on the opposite party No. 4 having failed to deposit 25% of the sale price immediately, the property in question should have been sold to the petitioner who was the second highest bidder.

17. Further, we find that the opp. party-Bank in obedience to the interim order passed by the learned Civil Judge (Jr. Division), Bhubaneswar in the suit filed by opp. party No. 4 has already sold the property in favour of the said opp. party No. 4 on receiving consideration amount. We, therefore, find no reason to interfere with the said sale by exercising jurisdiction under Article 226 of the Constitution.

18. In view of the above, this writ application is devoid of merit and the same is dismissed.

B.P. Das, J.

19. I agree.