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**(2019) 12 TEL CK 0001**

**High Court For The State Of Telangana:: At Hyderabad**

**Case No:** Writ Petition No. 19274 Of 2019

Habeebunnisa Begum

APPELLANT

Vs

M/s. Manidhari Metal  
Pvt. Ltd.,

RESPONDENT

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**Date of Decision:** Dec. 16, 2019

**Acts Referred:**

- Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 13(2), 17
- Security Interest (Enforcement) Rules, 2002 - Rule 8(1), 8(2), 8(6), 9(4), 9(5)
- Constitution Of India, 1950 - Article 226

**Hon'ble Judges:** M.S. Ramachandra Rao, J; K. Lakshman, J

**Bench:** Division Bench

**Advocate:** V. Ravinder Rao, B. Sreenivasa Reddy, M. Srikanth Reddy

**Final Decision:** Dismissed

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**Judgement**

K. Lakshman, J

1. Assailing the order dated 29.07.2019 of the Debts Recovery Tribunal - I, Hyderabad, in S.A. No.322 of 2015, the petitioner - auction purchaser,

filed the present writ petition.

2. The main contentions of the writ petitioner are that she is the successful bidder in the auction conducted by respondent No.5 - State Bank of India,

Hyderguda, Hyderabad on 27.03.2015, pursuant to e-auction sale, dated 24.02.2015, in respect of properties bearing

(i) House Number 1-4-888/B/A to an extent of 130 square yards for Rs.31,45,000/-, (ii) House Number 1-4-882/5/A to an extent of 31 square yards

for an amount of Rs.7,15,000/-, (iii) House Number 1-4-888/B to an extent of 258 square yards for an amount of Rs.74,40,000/- and (iv) House

Number 1-4-882/5 to an extent of 160 square yards for an amount of Rs.38,60,000/-, all situated at Bakaram, Hyderabad. In all she has paid an

amount of Rs.1,51,60,000/- and got the sale certificates registered in her favour later vide document Nos.1979 of 2015 to 1982 of 2015, dated

23.05.2015.

i) According to the petitioner, respondent No.1 herein availed a loan from respondent No.5 bank in the year 2009 and respondent Nos.2 to 4 offered

their properties as security. Since there was default in repayment of the loan, their account was declared as Non-Performing Asset. Subsequently,

respondent No.5 bank had issued notice on 01.03.2014 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") followed by possession notice on 08.10.2014 under Section 13 (2) of

the SARFAESI Act read with Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 (for short "Rules"). Respondent No.5 got published

the possession notice in two leading Newspapers viz., "Indian Express" and "Andhra Prabha" on 10.10.2014 as contemplated under Rule

8 (2) of the Rules, 2002. But, there was no response from respondent Nos.1 to 4 despite receiving and acknowledging the said notices. Respondent

No.5 issued sale notice dated 14.11.2014 claiming outstanding dues of Rs.1,71,38,575/- together with interest, expenses and costs.

3. It is the further contention of the petitioner that respondent No.5 issued e-auction sale notice dated 24.02.2015 as contemplated under the

SARFAESI Act intimating respondent Nos.1 to 4 herein about the auction to be held on 27.03.2015 in respect of the mortgaged assets. According to

her, the said e-auction sale notices dated 24.02.2015 were served on respondent Nos.1 to 4 and the same were affixed on the premises/conspicuous

part of the mortgaged properties, and also taken photographs to that effect. The Authorized Officer of the Bank has also got published the e-auction

sale notice dated 24.02.2015 in two leading Newspapers i.e., "Indian Express" and "Rahnuma-e-Deccan" on 24.02.2015 itself informing

that the auction would be held on 27.03.2015. The details of properties, minimum upset price of the auction etc., were mentioned in the said e-auction

notice dated 24.02.2015. Accordingly, auction was held on 27.03.2015, wherein the petitioner herein was declared as highest bidder. The petitioner

also paid an amount of Rs.1,51,60,000/- within the time frame contemplated under the Rules. On receipt of the said sum, respondent No.5 bank

confirmed the sale, issued the sale certificates in favour of the petitioner and got the same registered in favour of the petitioner vide document

Nos.1979 of 2015 to 1982 of 2015, dated 23.05.2015. After purchase, she has invested an amount of Rs.20.00 lakhs on the said properties for

repairs/remodelling, and since the date of purchase and registration of sale certificates, she has been in continuous possession of the said properties.

4. According to her, respondent Nos.1 to 4 herein have allowed respondent No.5 herein to complete the entire process and conveniently approached

the DRT-I, Hyderabad by way of filing an application under Section 17 of the SARFAESI Act vide S.A. No.322 of 2015, raising various irregularities

in conducting the sale.

5. The Tribunal vide order dated 29.07.2019, allowed the said S.A. No.322 of 2015 quashing the measures taken by respondent No.5 under the

SARFAESI Act including the auction conducted on 27.03.2015 and subsequent Sale Certificates registered vide document Nos.1979 of 2015 to 1982

of 2015, dated 23.05.2018. In the said order, the Tribunal also directed respondent No.5 bank to pay the auction amount received from the petitioner

herein with interest @ 9% from the date of receipt till payment, within two weeks from the date of receipt of copy of the said order. However, liberty

was granted to respondent No.5 bank to initiate further measures under the SARFAESI Act against the secured assets duly following all the

guidelines and rules laid down thereunder.

6. Feeling aggrieved by the said order, the petitioner herein, who is auction purchaser, filed the present writ petition.

7. It is relevant to note that the petitioner herein being auction purchaser was impleaded by the Tribunal vide order dated 15.02.2019 in I.A. No.294 of

2019 as respondent No.2. It is the contention of the petitioner herein that though respondent Nos.1 to 4 filed the said S.A. No.322 of 2015 in the year

2015 itself, respondent No.5 bank herein did not intimate the said fact to her and also did not take any steps to implead her as a party to the said S.A.

According to her, respondent No.5 bank intimated her in 2019 about filing of S.A. No.322 of 2015 by respondent Nos.1 to 4 and allowing the same on

15.02.2019. Thus, she came to know about the said proceedings in the year 2019 and that she was unaware of the same till she received notices from

the Tribunal. According to her, respondent No.5 bank kept her in dark with regard to the said proceedings. However, feeling aggrieved by the said

order, dated 29.07.2019, passed by the Tribunal in S.A. No.322 of 2015 she filed the present writ petition.

8. According to the petitioner, though respondent Nos.1 to 4 have raised several grounds in S.A. No.322 of 2015, the Tribunal has allowed the same

on the ground that respondent No.5 bank failed to substantiate the reasons for publishing possession notice dated 08.10.2014 in Andhra Prabha Telugu

Newspaper and publishing e-auction sale notice dated 24.02.2015 in Urdu Newspaper viz., Rahnuma-e-Deccan; and also the bank did not submit any

proof that vernacular newspaper in which sale notice was published is a leading newspaper having sufficient circulation in that locality. According to

her, respondent Nos.1 to 4 herein were aware of the entire proceedings including the auction much before the date of auction and they have been

intentionally kept silent till respondent No.5 bank completed the entire process. The intention of the Legislature in providing Rule 8 (6) of the Rules is

that no borrower should lose his right to retain his property by paying the dues on or before date of auction.

9. It is the further contention of the petitioner that the said Rahnuma-e-Deccan Newspaper was established before Independence. The mainstream of

Urdu Newspapers in Hyderabad is Siasat, Rahnuma-e-Deccan, Munsif, Rashtriya Sahara and Etemaad, and total circulation of all Urdu Newspapers

would be around 1.00 lakh. The one and only Newspaper still running today is Rahnuma-e-Deccan.

According to her, the said Newspaper is having wide circulation.

10. It is further contended by the petitioner that the subject properties are located in Bakaram, Gandhi Nagar, Hyderabad, where more than 50% of

the residents belong to the community to which the petitioner belongs. The Urdu Newspaper Rahnuma-e-Deccan is having sufficient circulation in the

said locality and also in Hyderabad. May be with the said reason, respondent No.5 bank got published the sale notice in the said Urdu Newspaper

Rahnuma-e-Deccan. According to her, respondent No.5 bank conducted the auction by following the entire procedure laid down under the

SARFAESI Act and the Rules framed thereunder and no irregularities were committed by respondent No.5 bank. She claims that she is a bona fide

purchaser in the auction conducted on 27.03.2015 and pursuant to the same she paid the entire amount within the stipulated time. On receipt of the

same only, the sale was confirmed and accordingly, sale certificates were issued in her favour and later got registered in the manner stated above.

11. According to the petitioner, the Tribunal failed to consider that respondent Nos.1 to 4 herein were well aware about the date of auction much

before. The Tribunal erred in holding that respondent No.5 bank failed to comply with the provisions of Rule 8 (2) of the Rules since the e-auction sale

notice was published in Urdu Newspaper Rahnuma-e-Deccan, which is not having sufficient circulation. According to her, the conclusion of the

Tribunal that respondent No.5 bank failed to substantiate the reason for publishing the possession notice in Andhra Prabha and e-auction sale notice in

Urdu Newspaper Rahnuma-e-Deccan is illogical and contrary to the SARFAESI Act.

12. With the above said contentions, the petitioner sought to set aside the impugned order.

13. Respondent Nos.1 to 4 filed their common counter reiterating the grounds urged by them before the Tribunal in S.A. No.322 of 2015. They further

contended that respondent No.5 bank did not follow the procedure laid down under the SARFAESI Act as well as Rules framed thereunder while

conducting the auction. According to them it is obligatory on the part of respondent No.5 bank to comply with the same, and there is no irregularity in

the impugned order and it is not liable to be interfered with.

14. Respondent No.5 bank filed a separate counter, almost reiterating their contentions put forth before the Tribunal in S.A. No.322 of 2015, and

prayed to pass appropriate orders in the present writ petition.

15. Heard Mr. V. Ravinder Rao, learned Senior Counsel, representing Mr. Tera Rajinikanth Reddy, learned counsel for the petitioner and Sri B.

Sreenivasa Reddy, learned counsel for respondent Nos.1 to 4, and also Mr. M. Srikanth Reddy, learned Standing Counsel for respondent No.5 Bank.

16. It is relevant to mention that respondent No.5 Bank did not challenge the impugned order dated 29.07.2019 passed by the Tribunal. However, in

the counter filed by the bank in the present writ petition, it prayed for passing appropriate orders. It is also relevant to mention that though S.A. No.322

of 2015 was filed in 2015 by respondent Nos.1 to 4 herein before the Tribunal, the petitioner herein got impleaded only on 15.02.2019.

17. From the above discussion, the admitted facts are that respondent No.1 availed the loan from respondent No.5 bank in the year 2009 by

mortgaging the properties of respondent Nos.2 to 4 as security. Respondent Nos.2 to 4 stood as guarantors to the said loan. As there was default in

repayment of said loan, respondent No.5 initiated proceedings under the SARFAESI Act. Respondent No.5 bank got published possession notice

dated 08.10.2014 under Section 13 (2) of the SARFAESI Act read with Rule 8 (1) of the Rules in two Newspapers viz., "Indian Express" and

Ã¢â¬ÅAndhra PrabhaÃ¢â¬Å on 10.10.2014 as contemplated under Rule 8 (2) of the Rules. Thereafter, the Authorized Officer of the Bank got published e-

auction Sale Notice, dated 24.02.2015, in two Newspapers viz., Ã¢â¬ÅIndian ExpressÃ¢â¬Å and Ã¢â¬ÅRahnuma-e-DeccanÃ¢â¬Å. It is relevant to mention

that within a span of four and half months i.e., from the date of possession notice dated 08.10.2014 and e-auction sale notice dated 24.02.2015,

respondent No.5 Bank chose to publish e-auction Sale Notice in Ã¢â¬ÅIndian ExpressÃ¢â¬Å and Ã¢â¬ÅRahnuma-e-DeccanÃ¢â¬Å instead of Ã¢â¬ÅAndhra

PrabhaÃ¢â¬Å. At this juncture, it would be relevant to extract Rule 8 (2) of the Rules which is as under:

Ã¢â¬Å“The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the

date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised

officer.Ã¢â¬Å

Admittedly, respondent No.5 got published the said possession notice in Indian Express and Andhra Prabha on 10.10.2014. There is no dispute with

regard to the publication of the said possession notice in the said newspapers as contemplated under Rule 8 (2) of the Rules. Similarly, it is also

relevant to extract Sub-rule (6) of Rule 8 of the Rules which is as under:

Ã¢â¬Å“The authorised 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,Ã¢â¬Å

(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 authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

As per the aforesaid proviso, the Authorized Officer of respondent No.5 bank shall publish sale notice in two leading Newspapers, one in vernacular

language having sufficient circulation in the locality. Whereas, in the present case, the Authorized Officer of respondent No.5 bank got published e-

auction sale notice in Indian Express and Rahnuma-e-Deccan on 24.02.2015. With regard to publication of the said notice in Indian Express

newspaper, there is no dispute. The dispute is only with regard to the publication of the said notice in Rahnuma-e-Deccan.

18. The learned counsel for the petitioner by referring to the background of the said Rahnuma-e-Deccan including its launching and circulation etc.,

would contend that it is a leading Urdu Newspaper having sufficient circulation in the said locality and also in Hyderabad. He would further contend

that the subject properties are located in Bakaram, Gandhinagar, Hyderabad, where more than 50% of the residents belong to the community to which

the petitioner belongs.

19. As discussed above, respondent No.5 bank got published the possession notice in Andhra Prabha on 10.10.2014 and within four and half months,

the very same bank got published e-auction sale notice in Urdu Newspaper - Rahnuma-e-Deccan. The explanation given by respondent No.5 bank in

the counter as well as the contention of the petitioner is that the subject properties are located in Bakaram, Gandhinagar, Hyderabad where more than

50% of the residents belong to the community to which the petitioner belongs and the said Rahnuma-e-Deccan is having sufficient circulation in the

said locality and also in Hyderabad. Except the same, there is no other explanation given by respondent No.5 bank with regard to change from other

leading newspaper in vernacular language i.e., from Andhra Prabha to Rahnuma-e-Deccan.

20. The intention of the Legislature in employing the language in the proviso to Rule 8 (6) of the Rules that public notice should be published in two

“leading newspapers, one in vernacular language having sufficient circulation in the locality, is to ensure that there is good publicity for the sale,

good competition for its purchase, and the borrower gets a good price on sale of his property. If the bidders are more, the bank can realise its dues

easily, and in order to attract more bidders, wide publicity in respect of auction of the property is required. For the said purpose only, the Legislature

intentionally laid down in the proviso to Rule 8 (6) of the Rules as to the publication of auction of property in two “leading newspapers, one in

vernacular language having sufficient circulation in the locality. It is not the intention of the Legislature that the bids should be received only from local

people or from only the people belonging to the community to which the petitioner belongs. Therefore, the contentions of respondent No.5 bank as well

as the writ petitioner that the subject properties are situated in Bakaram, Gandhinagar, Hyderabad where more than 50% of the residents belong to the

community to which the petitioner belongs and that Rahnuma-e-Deccan Urdu Newspaper is having sufficient circulation in the said locality are not

justifiable and the same are contrary to the Legislative Policy behind proviso to Rule 8 (6) of the Rules. Moreover, neither the petitioner nor

respondent No.5 bank gave the details of circulation of the said Urdu Newspaper - Rahnuma-e-Deccan either before the Tribunal during pendency of

S.A. No.322 of 2015 or before this Court. Therefore, the finding of the Tribunal in the impugned order that respondent No.5 bank failed to substantiate

the reasons for publishing possession notice dated 08.10.2014 in Andhra Prabha Telugu Newspaper and thereafter publishing e-auction sale notice

dated 24.02.2015 in Rahnuma-e-Deccan Urdu Newspaper, and thereby the bank violated the Rule 8 (6) of the Rules, is proper and we find no error in

it.

21. Respondent Nos.1 to 4 further contended that the petitioner - auction purchaser did not deposit the bid amount within the stipulated time as per

Rule 9 (3) and (4) of the Rules. In this regard, it would be relevant to extract Sub-rules (3) and (4) of Rule - 9 of the Rules as they stood at the

relevant time in 2015, for better understanding:

“9. Time of sale, issues of sale certificate and delivery of possession, etc.”

(1) x x x x

(2) x x x x

(3) On every sale of immovable property, the purchaser shall immediately i.e., on the same day or not later than next working day, as the

case may be, pay a deposit of twenty five per cent, of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the

authorised officer conducting the sale and in default of such deposit, the property shall be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of

confirmation of sale of the immovable property or such extended period as may be agreed in writing between the parties.

22. By referring to the said rules, the learned counsel for respondent Nos.1 to 4 would contend that the petitioner paid the amount with delay and

therefore, the same would amount to violation of the said provisions and also against the principle that Rule 9 (3) and

(4) are mandatory, as laid down by the Apex Court in Sri Siddeshwara Cooperative Bank Ltd. v. Iqbal (2013) 10 SCC 83,

followed by a Division Bench of this Court in Polisetty Haranadh Muralidhar v. Authorized Officer, Indian Overseas Bank 2016 (6) ALD 409.

23. As per the counter filed by respondent No.5 bank, the petitioner - auction purchaser paid 25% of the bid amount of Rs.45,06,000/- on 27.03.2015

and deposited the balance 75% of the amount viz., Rs.21.00 lakhs on 16.04.2015 and Rs.87,27,752/- on 20.05.2015.

24. But, as per the aforesaid rule, auction purchaser has to deposit 25% of the bid amount on the same day or not later than next working day, as the

case may be. Whereas, in the present case, the auction was held on 27.03.2015, and the petitioner - auction purchaser paid 25% of the bid amount i.e.,

Rs.45,06,000/- on 27.03.2015 itself. Then the auction purchaser shall pay the balance amount on or before the fifteenth day of confirmation of sale of

immovable property or such extended period as may be agreed upon in writing between the parties i.e., the borrower, purchaser and the secured

creditor.

25. It is also relevant to note that initiation of measures by respondent No.5 bank under the SARFAESI Act in the present case was in 2014 and the

auction was held on 27.03.2015. The amendment to Rule 9 (4) of the Rules vide G.S.R. No.1046 (E), dated 03.11.2016 came into force w.e.f.

04.11.2016 substituting the words "as may be agreed upon in writing between the parties" by the words "as may be agreed upon in writing

between the purchaser and the secured creditor, in any case, not exceeding three months". Before the said amendment, taking consent from the

borrower is mandatory. The word "parties" in sub-rule (4) of Rule 9 of the Rules before amendment would mean "the borrower" also.

26. As discussed above, admittedly the writ petitioner did not pay the balance bid amount within the stipulated period i.e., on or before fifteenth day of

confirmation of sale of immovable property. The auction held was prior to amendment to Rule 9 (4) of the Rules. Thus, there was no consent from

respondent No.1 - borrower for extension of time as claimed by the writ petitioner and respondent No.5 bank. Thus in the present case, admittedly,

the balance 75% of the sale amount viz., Rs.21.00 lakhs was paid on 16.04.2015 and Rs.87,27,752/- was paid on 20.05.2015 which was beyond the

stipulated period and without consent of respondent No.1 - borrower. However, respondent No.5 bank without there-being any pleading in the counter,

filed letters, dated 09.04.2015, 15.04.2015, 30.04.2015 and 22.05.2015 with regard to extension of time etc., but the same are of no use. We hold that

there is clear violation of Rule 9 (4) of the Rules and the sale was held by the Bank in favour of the petitioner contrary to the principle laid down by

the Apex Court in Sri Siddeshwara Cooperative Bank Ltd<sup>1</sup> followed by the Division Bench of this Court in Polisetty Haranadh Muralidhar

27. In fact, as per Rule 9 (5) of the Rules, in default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the

secured creditor 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. But, the Tribunal in the impugned order, directed respondent No.5 bank to pay the bid amount received from the petitioner

- auction purchaser with interest at 9% from the date of receipt till payment within two weeks from the date of receipt of copy of the order. There is

no challenge to the said finding either by respondent No.5 or by respondent Nos.1 to 4 by way of filing a writ petition. Further, the conduct of bank in

not initiating steps to implead the writ petitioner in S.A.No.322 of 2015 till February, 2019 is not bona fide. As stated above, the bank is having

fiduciary duty which the bank failed to exercise in the present case.

28. The SARFAESI Act is a Special Enactment and superficial in nature. Therefore, it is the bounden duty of the bank to strictly comply with the

provisions of the Statute as well as the procedures enumerated in the Rules framed thereunder. It is also relevant to note that bank is having

fiduciary duty to protect the interest of borrower, while putting properties to sale and to comply with the said provisions while initiating

measures under the SARFAESI Act. (See: Pochiraju Industries Ltd. v. Punjab National Bank 2018 (2) ALD 543).

29. In the case on hand, there are serious irregularities committed by respondent No.5 bank in initiation of measures under the SARFAESI Act and

also in compliance with Rules made there-under.

30. As such, we hold that the Tribunal rightly allowed S.A. No.322 of 2015 filed by respondent Nos.1 to 4 under Section 17 of the SARFAESI Act

with the specific findings and the same does not warrant interference by this Court under Article 226 of the Constitution of India.

31. The writ petition accordingly fails and the same is dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.