2024 INSC 780

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2024
(Arising out of S.L.P. (C) Nos. 8159-8160 OF 2023)

IDBI BANK LTD. ...APPELLANT(S)

VERSUS

RAMSWAROOP DALIYA AND ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.

2. The appellant-IDBI Bank has preferred these two appeals challenging the judgment and order dated 19.09.2022 passed by the High Court in Writ Petition No. 3820 of 2020, "Ramswaroop Daliya and 3 Ors. vs. IDBI Bank Ltd." and the order dated 29.11.2022 passed in Review Petition No. 1 of 2022 arising from the above writ petition.

3. The respondents who were the petitioners in the writ petition are the auction purchasers of the property which comprises of 2 *guntas* of land of Survey No. 121 part, situated at Bogaram village, Keesara Mandal, Medchal Malkajgiri district, Telangana. Pursuant to the e-auction notice dated 17.03.2018, the auction took place on 10.04.2018. The respondents were the highest bidders for a total sum of Rs. 1,42,50,000/-. They deposited 25% of the bid amount i.e., Rs. 36,00,000/- on the day of the auction itself. The auction was confirmed but the sale certificate was not issued and the sale deed was not executed as the respondents could not deposit the balance sale consideration within 15 days, may be for the reason that the appellant-Bank refused to accept the balance amount for various reasons. Finally, the appellant-Bank vide communication dated 24.12.2019 cancelled the auction and refunded the amount deposited by the respondents by means of four demand drafts which were never encashed by the respondents.

4. The respondents as such invoked the writ jurisdiction of the High Court challenging the action of the appellant-Bank

cancelling the auction dated 10.04.2018 unilaterally and for seeking a direction to issue the sale certificate after receiving the balance sale consideration of Rs. 1,06,50,000/-.

5. The aforesaid Writ Petition No. 3820 of 2020 filed by the respondents was allowed by the impugned judgment and order dated 19.09.2022 passed by the High Court holding that the appellant-Bank was not justified in withholding the sale certificate. The respondents were always ready and willing to pay the sale consideration. The appellant-Bank could not have denied the issuance of the sale certificate and the execution of the sale deed. The issuance of the sale certificate was not refused by the appellant-Bank for want of non-deposit of the balance sale consideration within 90 days as stipulated under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002[1], therefore, such a plea taken by the appellant-Bank for the first time in the writ petition is not tenable.

[1] Hereinafter referred to as 'the Rules'

6. The argument of the learned counsel for the appellant-Bank is that in view of the statutory provisions contained under the Rules, especially Rule 9(4) of the Rules, since the respondents had not deposited the balance sale consideration within the mandatory period of 90 days, the High Court has erred in directing the appellant-Bank to issue the sale certificate and to execute the sale deed. The balance sale consideration was never deposited by the respondents within the time permitted and the letter(s) of the respondents clearly establishes that they kept on seeking extension of time without depositing the amount. Moreover, on the complaint of the appellant-Bank to the Central Bureau of Investigation[2] made on 08.03.2018, the Enforcement Directorate[3] had taken *suo moto* cognizance and issued an advisory to the appellant-Bank not to release the title deeds.

7. In the facts and circumstances of the case, the only issue which arises for consideration is as to whether there was any default on part of the respondents in depositing the balance

[2] In short "CBI"
[3] In short "ED"

amount within the time prescribed pursuant to the auction sale dated 10.04.2018 so as to attract Rule 9(4) of the Rules and allow the appellant-Bank to cancel the auction which had already been confirmed.

8. There is no dispute to the fact that the appellant-Bank had issued e-auction notice on 17.03.2018 and had conducted the auction on 10.04.2018. The respondents had participated in the said auction and were recognized as the highest bidder who deposited 25% of the auction money amounting to Rs. 36,00,000/- then and there. On the very same day, a sale confirmation letter was issued by the authorized officer of the appellant-Bank requiring the respondents to pay the balance amount of Rs. 1,06,50,000/- within 15 days so that the sale certificate may be issued.

9. It may be noted that the respondents at no point of time have denied payment of the balance auction money as demanded to be paid within the 15 days period. It was only the appellant-Bank that denied the issuance of the sale certificate, first on the pretext that the guarantor had filed Writ Petition No. 12390 of 2018 challenging the e-auction

notice dated 17.03.2018 and had obtained a stay order on 18.04.2018. Secondly, the appellant-Bank on 08.03.2018 had made a complaint to the CBI and that ED took *suo moto* cognizance whereby an advisory was issued to the appellant-Bank not to release the original property documents and that the same be kept in safe custody of the bank till further directions of the ED.

10. The appellant-Bank issued e-auction Notice on 17.03.2018 after it had already made the complaint to the CBI but this aspect of the matter was not disclosed in the advertisement. Thus, a conscious decision was taken by the appellant-Bank to go ahead with the e-auction despite there being a complaint to the CBI. It is subsequent to the complaint to the CBI that the e-auction notice was issued and the e-auction was conducted on 10.04.2018 which was also confirmed in favour of the respondents. In such a situation it does not lie in the mouth of the appellant-Bank to take shelter on the basis of the complaint made to the CBI and to deny issuance of the sale certificate, particularly when there was no specific direction either of the CBI or the ED not to confirm the

auction sale or to issue the sale certificate. The only rider was to keep the property documents in safe custody. The respondents, on the other hand, never insisted for the release or the handing over of the property documents rather submitted that they would not create any third-party interest in the property auctioned and that the original documents of the property would be collected by them, subsequently on the consent and clearance from the CBI and ED. In the light of such a stand taken by the respondents on affidavit, the appellant-Bank apparently was not justified in refusing to issue sale certificate to the respondents on the pretext that there was an advisory from the ED. It is worth noticing that even the advisory of ED dated 08.06.2018 is not material for not accepting the balance sale consideration within the period of 15 days stipulated in the sale confirmation letter dated 10.04.2018 which period expired on 25.04.2018, much before the issuance of the above advisory. The respondents were not responsible either for the delay in depositing or non-acceptance of the balance auction amount by the appellant-Bank.

11. As far as the filing of Writ Petition No. 12390 of 2018 by one of the guarantors is concerned, an interim stay order was passed therein on 18.04.2018 by which time the auction had already taken place and confirmed. The said writ petition was ultimately dismissed on 18.07.2018 and as such the interim stay order ceased to exist. The interim stay order granted therein was of no effect insofar as the issuance of sale certificate to the respondents was concerned as the sale had already taken place and stood confirmed before the passing of the interim stay therein. There was no direction or stay on the issuance of sale certificate. The passing of the interim stay order in the above writ petition was not on account of the respondents so as to assign any default on their part in depositing the balance sale consideration within the time stipulated.

12. The communication dated 24.12.2019, by which the appellant-Bank took a decision to cancel the auction sale and to return the amount deposited by the respondents, is completely silent as regards the default, if any, committed by the respondents in depositing the balance auction amount as

per the mandate of Rule 9(4) of the Rules. The said plea was taken by the appellant-Bank for the first time through the counter affidavit filed in the writ petition. It is well recognized that the validity of an order can only be adjudged on the basis of the reasoning contained in the order and the said reasoning cannot be supplemented in any manner much less by means of a counter affidavit or a supplementary affidavit when the parties have entered into a litigation. In **Mohinder Singh Gill & Anr.** v. **Chief Election Commissioner and Ors**.[4] it has been clearly laid down that the parties are not permitted to raise new pleas not contained in the order impugned while assailing the correctness or the validity of such an order. In view of the law so laid down, the appellant-Bank was certainly not entitled to raise the plea of default under Rule 9(4) of the Rules through the counter affidavit.

13. Notwithstanding the above, the provisions of sub-Rules (4) and (5) of Rule 9 of the Rules, if read together in conjunction, would reveal that it is only for the default in payment of the

[4] (1978) 1 SCC 405

balance auction amount within the period mentioned that the property could be resold and that the period of 15 days stipulated therein for the deposit of the balance sale amount may be extended, as may be agreed upon in writing. It means that first there has to be a default on part of the auction purchaser to invite cancellation of the auction and second, that the period of deposit stipulated therein is not absolute rather extendable with the agreement of the parties.

14. Sub-Rules (4) and (5) of Rule 9 of the Rules are extracted below:

> *"(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 purchaser and the secured creditor, in any case not exceeding three months].*
>
> *(5) 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."*

15. In **Varimadugu Obi Reddy** v. **Sreenivasulu and Ors.**[5], this Court while interpreting Rule 9(4) of the Rules observed that it refers to a period of 15 days for deposit of balance sale consideration or such extended period for which no outer limit has been prescribed. Therefore, it appears that the time stipulated therein is not sacrosanct and the period can be extended as agreed upon in writing by the parties. A similar view has also been expressed in an earlier decision of this Court in **General Manager, Sri Siddeshwara Cooperative Bank Ltd. and Anr.** v. **Ikbal and Ors.**[6] wherein referring to Rule 9(4) of the Rules, it was held that the time for deposit stipulated therein is not sacrosanct and may be extended if there is a written agreement between the parties.

16. In the case at hand, the correspondence between the parties reveals that the respondents only sought extension of time for the reason that the appellant-Bank itself was not in a position to accept the amount as there was a complaint to the CBI, an advisory of the ED and a stay from the High

[5] (2023) 2 SCC 168
[6] (2013) 10 SCC 83

Court. The silence on part of the appellant-Bank in either immediately revoking the sale confirmation or refusing to extend the time, impliedly amounted to extension of time in writing with consent.

17. Secondly, the non-deposit of the balance sale consideration within the time limit prescribed under Rule 9(4) was not attributable to the respondents so as to call them defaulters within the meaning of the provisions of Rule 9 (4) and (5) of the Rules.

18. The correspondence on record clearly reveals that the respondents were always ready and willing to deposit the balance auction amount of Rs.1,06,50,000/- and had rather submitted a bank draft dated 15.10.2022 of the said amount and had requested for the issuance of the sale certificate and possession of the auction property. The said correspondence clearly establishes the *bona fide* of the respondents and it was only the appellant-Bank who had avoided the issuance of the sale certificate. There is no material on record to justify non-acceptance of the balance sale consideration from the respondents within 15 days of the confirmation of the sale

and whatever pleas have been taken by the appellant-Bank to avoid acceptance are all subsequent and are not very material.

19. In these facts and circumstances, reason for the non-issuance of the sale certificate is solely attributable to the appellant-Bank and that there were no latches, negligence or default on part of the respondents in offering to deposit the balance auction amount. Since there is no default on their part, non-deposit of the said amount within the stipulated period would not be fatal within the meaning of sub-Rules (4) and (5) of Rule 9 of the Rules.

20. It is pertinent to mention here that the cancellation of the auction sale *vide* communication dated 24.12.2019 is purely unilateral in nature without any notice or opportunity of hearing to the respondents. The said cancellation as such is *per se* in violation of the principles of natural justice and is illegal.

21. Learned counsel for the appellant-Bank, relying upon **Union Bank of India** v. **Rajat Infrastructure Private Limited and**

Others[7], had submitted that the statutory period prescribed under Rule 9(4) is not liable to be extended by this Court even in exercise of powers under Article 142 of the Constitution of India. In the said case, this Court accepted that though the plenary powers of the Supreme Court under Article 142 of the Constitution are inherent which are of very wide amplitude but the said power cannot be used to supplement the substantive law by ignoring the express statutory provision. The aforesaid authority cited on behalf of the appellant-Bank is not of any help to it in this case as we are not providing for any new period of limitation for depositing the balance sale consideration or extending the time period provided under the Rules. We are simply holding that the period to deposit the balance sale consideration, as provided under the Rules, is not sacrosanct and is extendable with the consent in writing of the parties and that Rule 9(4) will only come into play when there is default on part of the party i.e. the auction purchaser to deposit the amount and will not

[7] (2023) 10 SCC 232

apply where there is no default or that the default, if any, lies upon the auctioneer i.e. appellant-Bank in the case at hand.

22. Accordingly, we are of the considered opinion that the High Court has not committed any error of law in the peculiar facts and circumstances of the case in holding that the appellant-Bank manifestly erred in cancelling the auction sale dated 10.04.2018 and in directing to issue sale certificate/register the sale deed in favour of the respondents after getting the balance auction amount deposited within a period of four weeks.

23. In view of the foregoing, the civil appeals are dismissed with no order as to costs.

24. Pending application(s), if any, shall stand disposed of.

..... J.
(PANKAJ MITHAL)

..... J.
(R. MAHADEVAN)

NEW DELHI;
OCTOBER 16, 2024