

IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Regular Appeal No. 206/2016

State Bank of India, Stressed Asset Resolution Branch,
State Bank of India, Administrative Office, The Mall,
Kanpur.

.....Appellant

Versus

1. Raj Kumar S/o Late Hingwa R/o 326, Ram Puram, Shyam Nagar, Kanpur- 208001.
2. Abhishek Shukla S/o Nand Kumar Shukla R/o 346 Civil Lines Unnao- 209801.

.....Respondents

Advocates who appeared in this case:

For the appellant-Bank	Shri Sandeep Arora, Advocate
For the respondent No. 1- borrower	Shri Prabhav Srivastava, Advocate, holding brief of Shri Vinay Sharma, Advocate
For the respondent No. 2,	None

JUDGMENT

Date of Decision: 16.10.2024

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act") against the order dated 30.07.2016, whereby the S.A. filed by the respondent-borrower has been allowed by the Tribunal below.
2. The brief facts of the matter are that the respondent no. 1-borrower was granted housing loan by the appellant-Bank, to which the property was mortgaged by the borrower with the Bank by depositing title deed of the same. Since the borrower did not maintain the financial discipline, therefore, the account was classified as NPA and the demand notice dated 03.03.2009 was issued under

section 13(2) of the SARFAESI Act for a sum of Rs. 5,49,857/-. Since the respondent-borrower did not pay any heed to the said demand, therefore, the symbolic possession of the property in question was taken by the Bank by issuing possession notice dated 10.10.2013 under section 13(4) of the said Act. Thereafter, auction sale notice dated 18.09.2015 was issued and published in the newspapers scheduling the auction of the property in question on 30.10.2015. Pursuant to it, the property was sold and the recovery certificate was issued to the respondent No. 2-auction purchaser.

3. The respondent-borrower challenged the auction sale dated 30.10.2015 by filing the securitization application No. 362/2015, which has been allowed by the Tribunal below vide order impugned holding that there is violation of Rule 9(3) of the Security Interest (Enforcement) Rules, 2002 (in short "Rules, 2002"). Being aggrieved by the said order, the present appeal has been filed by the appellant-Bank.
4. Learned counsel for the respondent-Borrower submitted that the only question involved in the present case is with regard to the interpretation of word "immediate" as contained in the Rule 9(3) of the Rules, 2002, which was existing prior to the amendment made in the year 2016. It was further contended that the auction was held on 30.10.2015, which was Friday and the next day was Saturday, which was working day of the Bank. It was also contended that the cheque was presented on 02.11.2015 and the same was encashed on 03.11.2015. It was further contended that the auction was held on 30.10.2015 between 12:00-2:00 p.m. and thereafter, the auction purchaser had clear two hours time to deposit the amount

with the Bank, but the auction purchaser has not deposited any amount, as the working hours of the Bank is upto 4:00 pm. It was, therefore, contended that there is clear violation of Rule 9(3) of the Rules, 2002.

5. It was lastly contended that after issuance of demand notice dated 03.03.2009 under section 13(2) of the SARFAESI Act for Rs. 5,49,897/-, the respondent-borrower deposited Rs. 4.92 lacs, which is more than 90% of the said amount, therefore, no proceeding could have been drawn as per section 31(j) of the SARFAESI Act. Hence, the proceedings with regard to the sale is liable to be quashed on this ground also. It is, therefore, prayed that the impugned order does not call for any interference by this Tribunal and the appeal may be dismissed with costs.
6. Learned counsel for the appellant submitted that the argument, which has been raised by the respondent with regard to section 31(j) of the SARFAESI Act, was not placed before the Tribunal below, therefore, no finding was returned thereon and only finding, which has been recorded by the Tribunal below, is in paragraph No. 4 of the order impugned at page No. 18, therefore, the provision of section 31 would not apply.
7. Learned counsel for the appellant further submitted that the dictionary meaning of word "immediately" will not apply to the present case as the same has been decided by the Hon'ble Supreme Court in the matter of Rosali Vs. Vs. Taico Bank and Ors., (2009)17 Supreme Court Cases 690, in which the Hon'ble Apex Court has held that the word "immediately" means "within reasonable time". It is reiterated by the learned counsel for the appellant that

31.10.2015 was not working day being Saturday and 01.11.2015 was Sunday, therefore, the argument of the learned counsel for the respondent-Borrower regarding the day Saturday is not tenable. Learned counsel for the appellant has drawn attention of this court to the page No. 99 of paper book, which is statement of account and has stated that on 29.10.2015, Rs. 90,000/- was received and has next drawn attention to page no. 100, 101, 102 and 103 of the paper book and has stated that deposit receipt along with cheque received by the Bank on 31.10.2015 and the Bank presented the cheque for the payment on 02.11.2015, but they received the amount on 31.10.2015 itself, there is no violation of Rule 9(3) of the Rules 2002, but the Tribunal below has held that Rule 9(3) is not complied with, which is against the documents on record. It was, therefore, prayed that the order impugned may be set aside and the appeal may be allowed.

8. In reply, learned counsel for the respondent-borrower has relied upon para 5.33 of the memo of appeal and has stated that the Bank itself has admitted in the said paragraph that the cheque could be presented for collection on 02.11.2015 and the collection was received on 03.11.2015, therefore, the argument as raised by the Bank is not sustainable. It was further contended that there was specific pleading before the DRT that 90% of the amount due has been deposited by the borrower, therefore, the provision of section 31(j) would apply.
9. Heard the learned counsels for the parties and perused the record.

10. The sole question involved in the present case is, as to whether Rule 9(3) of the Rules, 2002 has been complied with or not?
11. It is to be seen that the sale notice was issued on 18.09.2015 scheduling the auction to be held on 30.10.2015 from 12:00 noon to 2:00 p.m. and the same was published in two newspapers on 20.09.2015 and the property was sold for Rs. 15,85,000/- in favour of the respondent No. 2. After declaration of the highest bidder by the secured creditor, 25% of the bid amount had to be deposited by the auction purchaser immediately as per Rule 9(3) of the Rules 2002, but the respondent No. 2- Auction Purchaser had given two cheques, which were deposited with the Bank on 31.10.2015 and deposit slips are at page No. 102 and 103 of the memo of appeal and the payment was received on 03.11.2015 as admitted by the appellant-Bank in para no. 5.33 of the memo of appeal, whereas the Rule 9(3) says that "*on every sale of immovable property, the purchaser shall immediately deposit of 25% of the amount of sale price to the authorized officer conducting the sale and in default of such deposit, the property shall forthwith be sold again*".
12. It is admitted fact that 30.10.2015 was Friday and 31.10.2015 and 01.11.2015 were Saturday and Sunday, but 02.11.2015 was working day of the appellant-Bank. It is well known to the Bank that cheque is not a paid instrument. If in lieu of cheque, the respondent No. 2- auction purchaser had deposited the Bank Draft, then the matter would have been otherwise. In the present case, it is to be noted that the auction took place on 30.10.2015 between 12:00 to 2:00 p.m., hence there was ample opportunity for the auction purchaser to deposit 25% of

the bid amount on the same day, as the auction purchaser had clear 2 hours time for the same, but the respondent no. 2 has neither deposited the said amount on the same day nor on the next working day i.e. 02.11.2015, but it is admitted by the Bank that the same was deposited on 03.11.2015. However, the word 'immediate' is a very important word. As per the Black's Law Dictionary, the meaning of the word "immediate" is "*without interval of time, without delay, straight way, or without any delay or laps of time" forthwith*". As such the money was not deposited immediately, therefore, the said deposit cannot be considered as legal deposit as per the statutory requirement. The amount was deposited by the auction purchaser through a cheque in the present case on 31.10.2015, which was encashed on 03.11.2015 i.e. after three days, hence it cannot be said that the amount was deposited immediately as per the statutory provisions of the Act and Rules made thereunder. As such the Tribunal below has rightly held that there was gross violation of the Rule 9(3) of the Rules, 2002.

13. So far as the contention of the respondent-Borrower with regard to the application of section 31(j) of the SARFAESI Act is concerned, it is clear from the S.A. filed by the borrower that the said issue was raised before the Tribunal below, but the Tribunal below while passing the order impugned has not considered the same. If the respondent-Borrower was aggrieved by the impugned order to this extent, he ought to have filed a separate appeal, but he did not do so, therefore, the said issue cannot be considered in the present appeal as it has been filed by the appellant-Bank for its specific relief.

14. In view of the above, there is no infirmity or illegality in the order impugned. Accordingly, the appeal is dismissed with no order as to costs.
15. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-drt portal.

CHAIRPERSON

VN GIRI