

AN AUCTION SALE BY A BANK CAN BE CANCELLED ONLY IF AN AUCTION PURCHASER DEFAULTS IN PAYMENT OF BALANCE CONSIDERATION

INTRODUCTION:

*The Supreme Court of India in a recent decision in **IDBI Bank Vs Ramswaroop Daliya and Ors.**¹, held that the period to deposit the balance sale consideration, as provided under the Security Interest (Enforcement) Rules, 2002, was not sacrosanct and could be extended with the consent in writing of the parties and that Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 would only come into play when there was default on part of the party i.e. the auction purchaser to deposit the amount and would not apply where there was no default or that the default, if any, was of the auctioneer.*

FACTS:

The Respondents before the Apex Court "**Respondents**" were the auction purchasers of a property comprising of 2 Guntas of land situated at Telangana.

Pursuant to an e-auction notice dated 17th March, 2018, issued by IDBI Bank, the Appellant before the Apex Court "**Appellant**", an auction took place on 10th April, 2018, at which time the Respondents were recognized as the highest bidders for a total sum of Rs. 1,42,50,000/-. The Respondents thereafter deposited 25% of the bid amount i.e. Rs. 36,00,000/- with the Appellant on the day of the auction itself.

In view thereof, the auction was confirmed, however, 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 as the Appellant refused to accept the balance amount for various reasons as stated hereinafter.

Vide a communication dated 24th December, 2019, the Appellant cancelled the auction and

refunded the amount deposited by the Respondents by means of four demand drafts which were not encashed by the Respondents.

The Respondents invoked the writ jurisdiction of the High Court challenging the action of the Appellant of cancelling the auction dated 10th April, 2018 unilaterally and for seeking a direction to issue a sale certificate after the balance sale consideration of Rs. 1,06,50,000/- being received by the Appellant.

The aforesaid Writ Petition filed by the Respondents was allowed vide an order dated 19th September, 2022 ("**Impugned Order**") passed by the High Court wherein the High Court held that the Appellant was not justified in withholding the sale certificate. The Respondents were always ready and willing to pay the sale consideration. The Appellant 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 for want of non-deposit of the balance sale consideration within 90 days as stipulated under Rule 9(4) of the

¹ Civil Appeals in SLP (C) Nos. 8159 – 8160 of 2023

Security Interest (Enforcement) Rules, 2002 ("**Rules**"). A Review Petition was also preferred by the Appellant which was dismissed.

Being aggrieved by the Impugned Order the Appellant preferred an appeal challenging the Impugned Order.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was as follows:

Whether there was any default on part of the Respondents in depositing the balance amount within the time prescribed pursuant to the auction sale dated 10th April, 2018, so as to attract Rule 9(4) of the Rules and allow the Appellant to cancel the auction?

JUDGMENT:

The Apex Court observed that the Appellant had issued an e-auction notice on 17th March, 2018, and had conducted the auction on 10th April, 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/-. On the very same day, a sale confirmation letter was issued by the authorized officer of the Appellant requiring the Respondents to pay the balance amount of Rs. 1,06,50,000/- within 15 days so that the sale certificate could be issued.

It was observed that the Respondents had at no point of time denied payment of the balance auction money as demanded within the 15 days period. It was the Appellant that denied the issuance of the sale certificate, (i) first on the pretext that the guarantor had filed Writ Petition No. 12390 of 2018 challenging the e-auction notice dated 17th March, 2018 and had obtained a stay order on 18th April, 2018 and (ii) the Appellant had on 8th March, 2018, made a

complaint with the Central Bureau of Investigation ("**CBI**") and that the Enforcement Directorate ("**ED**") took suo moto cognizance whereby an advisory was issued to the Appellant not to release the original property documents and that the same be kept in safe custody of the Appellant till further directions of the ED.

The Appellant issued an e-auction Notice on 17th March, 2018, after it had already made the complaint to the CBI. This aspect of the matter was not disclosed in its advertisement. In such a situation it did not lie in the mouth of the Appellant 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 by 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 and had in fact 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. Accordingly, the Apex Court held that the Appellant was not justified in refusing to issue sale certificate to the Respondents on the pretext that there was an advisory from the ED.

As far as the filing of Writ Petition No. 12390 of 2018 by one of the guarantors was concerned, an interim stay order in Writ Petition No. 12390 of 2018 was passed therein on 18th April, 2018 by which time the auction had already taken place and confirmed. The said Writ Petition was ultimately dismissed on 18th July, 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. Further, there was no direction or stay on the issuance of sale certificate.

The communication dated 24th December, 2019, addressed by the Appellant was completely silent as regards the default, if any, committed by the Respondents in depositing the balance auction amount as per Rule 9(4) of the Rules.

The Apex Court observed that the provisions of Rule 9(4) and Rule 9(5) of the Rules, if read together in conjunction, would reveal that it was only on the default in payment of the balance auction amount within the period mentioned that the property could be resold however the period of 15 days stipulated therein for the deposit of the balance sale amount could be extended, if agreed upon in writing.

The Apex Court relied on its earlier decision in **Varimadugu Obi Reddy v. Sreenivasulu and Ors.², General Manager, Sri Siddeshwara Cooperative Bank Ltd. and Anr. v. Iqbal and Ors.³** interpreting Rule 9(4) of the Rules wherein it observed that the time stipulated therein was not sacrosanct and the period could be extended if agreed upon in writing by the parties.

The Apex Court observed that in the case at hand, the correspondence between the parties revealed that the Respondents sought extension of time only because the Appellant 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 Court. The silence on part of the Appellant in either immediately revoking the sale confirmation or refusing to extend the

time, impliedly amounted to extension of time in writing with consent.

The Apex Court further observed that the non-deposit of the balance sale consideration within the time limit prescribed under Rule 9(4) of the Rules was not attributable to the Respondents so as to call them defaulters within the meaning of the provisions of Rule 9(4) and Rule 9(5) of the Rules. The correspondence on record clearly revealed that the Respondents were always ready and willing to deposit the balance auction amount which established the bona fides of the Respondents and it was only the Appellant who had avoided the issuance of the sale certificate.

The Apex Court observed that the reason for the non-issuance of the sale certificate was solely attributable to the Appellant and that there were no laches, negligence or default on part of the Respondents in offering to deposit the balance auction amount. Since there was no default on the part of the Respondent, non-deposit of the said amount within the stipulated period would not be fatal within the meaning of Rule 9(4) and Rule 9(5) of the Rules.

The Apex Court observed that the cancellation of the auction sale by the Appellant vide communication dated 24th December, 2019, was purely unilateral in nature without any notice or opportunity of hearing to the Respondents. The said cancellation as such was per se in violation of the principles of natural justice and was illegal.

The Apex Court held that the High Court had not committed any error of law in the peculiar facts and circumstances of the case in holding that the Appellant manifestly erred in cancelling the auction sale dated 10th April, 2018.

² (2023) 2 SCC 168

³ (2013) 10 SCC 83

In view of the aforesaid, the Civil Appeals were dismissed.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.