

S.B. Civil Contempt Petition No.1003/2018

Date: August 08, 2018.

HON'BLE MR. JUSTICE ALOK SHARMA

Mr. Satish Khandelwal ] for the petitioner.

Mr. Govind Khandelwal]

Mr. Bhrigu Sharma ] for respondents.

Mr. Akshat Kulshreshtha]

Vide interim order dated 25-1-2018 in SBCWP No.2033/2018 this court (Hon'ble Mr. Justice M. N. Bhandari) directed that till hearing of the stay application before the Debt Recovery Tribunal (DRT) the proceedings under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'SARFESI') the auction sale of the petitioner's immovable property, which had already taken place would not be confirmed. Admittedly till date the said stay application has not been disposed of by the DRT one way or the other. Yet it appears that the petitioner's property having been put to auction on 28-2-2018, the sale was confirmed by the Authorized Officer on 26-4-2018, despite notice of court's interim order dated 25-1-2018.

Counsel for the petitioner submitted that on the admitted facts of the case, aside of clear contempt of the interim order dated 25-1-2018 being made out, the confirmation of sale by the Authorized Officer and consequent issue of sale certificate in favour of the

auction purchaser is palpably void in law and liable to be set aside. In support of his contention counsel relied on the judgment of the Apex Court in the case of Jehal Tanti Vs. Nageshwar Singh [(2013)14 SCC 689].

Mr. Bhritu Sharma appearing on behalf of respondents submitted that the interim order dated 25-1-2018 speaks only of hearing of the stay application by the DRT in the proceedings initiated by the petitioner and there was no restraint on confirmation of sale till the disposal of the stay application. The petitioner was heard by the DRT and merely because the prayer for stay was not addressed, there was no reason to postpone the confirmation of the auction sale and issue of a sale certificate. He further submitted that it was pursuant to auction notice dated 8-2-2018 the auction was held on 28-2-2018, and the aforesaid proceedings were not under challenge in the SBCWP No.2033/2018—the writ petition in issue related to a notice for auction of the petitioner's property under the SARFESI Act of 2002 on 30-1-2018—which was abandoned. Counsel further submitted that the record of proceedings before the DRT indicates that the matter was fixed for final disposal after the petitioner sought time to file rejoinder to the reply of the application moved under Section 13(2) and 13(4) of the SARFESI Act. Counsel submitted that no order on the stay application being passed it tantamounted to the prayer for stay application having been impliedly rejected. In the facts of the case, no

deliberate contravention of the interim order dated 25-1-2018 passed by this court if at all, can be made out. Counsel finally submitted that the Bank has filed an application for clarification of the order dated 25-1-2018. And till such time the said application is decided, this contempt petition be kept in abeyance.

Heard. Considered.

A wholistic reading of the interim order dated 25-1-2018 makes it evident that till the disposal of the stay application by the DRT the auction sale of the petitioner's immovable property was not to be confirmed. To construe the court's interim order literally and contend that only hearing of the stay application not its disposal was required, would attribute to it redundancy. "Hearing" of the stay application in the context the word was used in the court's interim order to all reasonably and bonafide acting necessarily would mean disposal of the stay application. Yet the auction sale was confirmed on 26-4-2018 denying the obvious effect of the interim order dated 25-1-2018. I also find no force in the contention of Mr. Bhriugu Sharma that because auction sale, its confirmation and sale certificate did not relate to notice of sale issued on 30-1-2018 the subject of SBCWP No.2033/2018 in which the interim order dated 25-1-2018 was passed and which notice was not acted upon, but relates to the subsequent notification of sale dated 8-2-2018, no contempt can be made out. To allow this argument would facilitate circumvention of the order of the court and such a modus of

circumvention plainly contrary to the intent can never be accepted by the court in the interest of justice. Vide interim order dated 25-1-2018 there was a clear restraint on confirmation of auction sale of petitioner's immovable property till the hearing of the stay application before the DRT. That restraint stands contravened by confirming the auction sale on 26-4-2018 and issue of sale certificate qua the petitioner's immovable property. It is also important to note that there was only one auction purchaser in whose favour the auction sale has been confirmed and sale certificate issued—which is indicative prima facie at least of unholy haste. The argument of pendency of application for clarification of the interim order dated 25-1-2018, subsequent to confirmation of sale on 26-4-2018 and filing of this contempt petition, appears to be an afterthought and based thereon there can be no escape for the Authorized Officer concerned being in contempt, and the confirmation of the auction sale and issue of sale certificate being void.

Albeit the auction purchaser Rameshwar Sharma is present in person, he has not been impleaded as party to the contempt petition. However in this petition this court is only concerned with regard to willful default and disregard of the interim order dated 25-1-2018 and its consequences. In this view of the matter the argument advanced by Mr. Rameshwar Sharma of being a bonafide purchaser at DRT's auction is of no avail.

In the facts obtaining, the auction sale of the petitioner's immovable property having been confirmed and sale certificate having been issued in cross hair of the interim order dated 25-1-2018 passed by this court and void also in terms of the judgment of the Apex Court in the case of Jehal Tanti Vs. Nageshwar Singh (supra), I would declare the said confirmation of sale on 26-4-2018 and sale certificate following to be void. Consequences to follow. The respondents are directed to take back possession of the petitioner's immovable property of which sale was confirmed on 26-4-2018 and sale certificate issued by resort to all legal processes as may be available and thereafter keep it in their custody.

As far as the punishment for contempt of the interim order dated 25-1-2018 is concerned, I am of considered view that this issue can be addressed subsequently, as the counsel for the parties have submitted that the dispute between the petitioner and the Bank of Maharashtra is capable of being amicably resolved and attempt to so do is underway.

For orders on punishment for the contempt of the interim order dated 25-1-2018 list the case on August 20, 2018.

(Alok Sharma), J.

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