

Regular Appeal No. 27/2023

Allahabad Bank Vs. Sukan Malviya & 2 Ors.

Present: Shri P. N. Tripathi, counsel for the appellant-Bank,
Ex-parte against the respondents-borrowers,
Shri S. K. Gupta, counsel for the respondent no. 3-Auction
Purchaser,

ORDER

Date of Pronouncement: 02.07.2026

The present case was heard and reserved for orders vide order dated 17.04.2026 of this Appellate Tribunal.

Learned counsel for the appellant submitted that the Tribunal below vide order impugned has set aside the auction sale dated 10.09.2018, which was conducted pursuant to the sale notice dated 08.08.2018, holding that there was no clear 30 days' notice to the borrowers. It was further contended that the sale notice was issued on 08.08.2018 scheduling the auction on 10.09.2018, which was published in the newspapers on 08.08.2018 and as such there was a clear 30 days' sale notice to the borrowers, but this aspect of the matter has not been considered by the Tribunal below, therefore, the order impugned may be set aside and the appeal filed by the appellant may be allowed.

It appears that on behalf of the respondent no. 3, Shri S. K. Gupta has appeared, but despite giving several opportunities, he has not filed any reply to the memo of appeal, but he argued the case.

Learned counsel for the respondent-Auction Purchaser submitted that the respondent-Auction Purchaser is ready either to get the auction amount back or the property in question. It was, therefore, prayed that an appropriate order may be passed, which this Hon'ble Tribunal may deem fit.

Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the demand notice and possession notice as well as the sale notice were challenged by the borrowers, but the challenge of demand notice and possession notice dated 22.09.2016 was dismissed by the Tribunal below vide order dated 14.05.2019, which has never been challenged by any of the parties, therefore, the same has attained finality, thus the question involved in the present case is only with regard to the auction sale of the property in question.

The relevant facts of the present case are that the respondent no. 1 was granted some credit facilities vide sanction letter dated 18.11.2013 by the appellant-Bank under the Prime Minister Employment Generation Programme Scheme, to which the respondents no. 1 & 2-borrowers executed D.P. Note, letter of guarantee and created equitable mortgage in respect of the property in question. Since the respondents-borrowers did not maintain the financial discipline, therefore, the account was classified as NPA and after issuance of demand notice dated 04.05.2018 followed by possession notice dated 20.07.2018, the appellant-Bank issued sale notice on 08.08.2018 scheduling the auction of the property in question on 10.09.2019. The property was sold and sale certificate was issued on 17.09.2018 in favour of the respondent no. 3, which was also got registered on 20.09.2018.

It appears that the respondents-borrowers challenged the entire proceedings of the respondent-Bank by filing S.A. No. 475/2018 before the Tribunal below and after counter and rejoinder, the challenge of demand notice and possession notice was dismissed vide order dated 14.05.2019, which reached to the finality for want of non-challenge of the same by any of the parties, but the auction proceedings have been

quashed by the Tribunal below vide order impugned. Being aggrieved by the said order, the present appeal has been filed by the appellant.

It is to be seen that the respondent-Bank issued auction sale notice on 08.08.2018, which was dispatched to the borrowers on 10.08.2018, copy of sale notice is at page no. 175 & 176 of the memo of appeal and copies of postal receipts dated 10.08.2018 is at page no. 138 of the memo of appeal. As per copy of postal tracking report at page no. 139 & 140 of the paper book, the sale notice was delivered on 25.08.2018 and the sale was conducted on 10.09.2018. In this regard, Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 says "*The authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule(5)*". Thus the period of 30 days is to be counted from the date of service of sale notice. In the present case, the sale notice was served upon the borrowers on 25.08.2018 and the sale was conducted on 10.09.2018. If the period of 30 days is counted from the date of service of sale notice, then the said sale is found to have been conducted on 16th day, thus the said sale was conducted by the Bank in violation of Rule 8(6) of the Rules, 2002. Further, the said sale notice was published in newspapers, copies of which are placed at page no. 132 & 133 of the paper book, but the said paper clippings do not contain the name of newspapers nor contain the date of publication, thus the said publications cannot be taken into consideration, hence there is also violation of proviso of Rule 8(6) read with Rule 9(1). As such the Tribunal below has rightly held that the sale was conducted without giving clear 30 days' notice to the applicants.

In view of the aforesaid, the order impugned does not call for any interference by this Tribunal. Thus the appeal filed by the appellant is dismissed with no order as to costs.

A copy of this order be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.


CHAIRPERSON

VN GIRI,PS