

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/7/2015

C O R A M

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.20541 of 2015

The Authorised Officer/
Deputy General Manager
Mr.Rc.Misra,
Bank of Maharashtra
Chennai Zonal office
No.4 Sivagnanam Road
T. Nagar
Chennai 600 017.

... Petitioner

Vs

1. Satyam Educational Trust
rep. By its Chairman
Mr.A.Thinagar
II Floor
S.D.S.Building
Court Road
Nagercoil 619 001.

2. Mr.A.Thinagar

3. T. Athisaya Raja

4. A. Kanomozhy

5. A. Dhanalakshmi

6. Dr. Rathinasamy

7. Chairperson
Debts Recovery Appellate Tribunal
- Chennai
4th Floor
Indian Bank Circle Office
55 Ethiraj Salai
Chennai 600 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to quash the interim order of stay granted by the seventh respondent in A.IR 341 of 2015 dated 8/6/2015.

For petitioner : Mr.SP.Chockalingam

O R D E R

(Order of the Court was made by SATISH K. AGNIHOTRI,J.,)

The petitioner Bank, purportedly a secured creditor has come up with this petition seeking to quash the interim order of stay dated 8/6/2015 granted by the Debts Recovery Appellate Tribunal, Chennai in AIR [SA] 341 of 2015

2. On a perusal of the impugned order, it is evident that being aggrieved by the order passed in S.A No.326 of 2014, the first respondent/appellant therein had preferred an appeal. Before the appeal was taken up, the appellant therein had preferred AIR [SA].No.341 of 2015 seeking waiver of pre-deposit as required under Section 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"). The learned Tribunal, while issuing notice and granting time to the petitioner Bank to file Vakalat and counter, granted interim stay of sale till counter is filed.

3. Heard the learned counsel for the petitioner.

4. The learned counsel appearing for the petitioner submits that interim order, even at the stage of consideration of waiver application cannot be granted. To substantiate his case, the learned counsel relied on the judgment of the Supreme Court in Narayana Chandra Ghosh Vs. UCO Bank and Others¹, wherein it has been held that pre-deposit is mandatory under Section 18 (1) of the SARFAESI Act.

5. We have examined the submission of the learned counsel for the petitioner as well as the citation relied on by him. In Narayana Chandra Ghosh (supra), the Supreme Court was dealing with the requirement of pre-deposit in appeal arising from the order passed by the Debt Recovery Tribunal and the question as to whether pre-deposit is mandatory for waiver application was not in issue. The appellate Tribunal while considering the application for waiver of pre-deposit, issued notice in the peculiar facts of the case and granted interim stay till filing

1 (2011) 4 SCC 548

of vakalat and counter affidavit. In the case on hand, it is manifest that the sale of the property in question was impending and as such, the afore-stated decision is of no assistance to the facts of the case.

6. Keeping in view the facts and circumstances of the case, interim stay was granted enabling the petitioner Bank to file vakalat and counter affidavit. The matter was directed to be listed on 22nd June, 2015. After the matter was listed on 22nd June, 2015, the petitioner has come up with this petition on 6th July, 2015. The proper course for the petitioner is to file vakalat and counter and contest the matter for vacating the stay, if so advised. In that view of the matter, there is no merit in this case.

7. Accordingly, this petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Chairperson,
Debts Recovery Appellate Tribunal Chennai.
4th Floor,
Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai-8

+1cc to Mr.SP.Chockalingam, Advocate sr.no. 34946

सत्यमेव जयते

W.P.No.20541 of 2015

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