THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.33472 of 2015

ORDER: (*Per Hon'ble Sri Justice R.Subhash Reddy)*

This writ petition is filed for a Mandamus to set aside the sale notice, dated 20.08.2015, and the subsequent corrigendum notice, dated 24.09.2015, proposing to conduct auction on 12.10.2015 in respect of house bearing No.1-2-45, T.S.No.559/3, 5 & 6, Nalmad Road, Bapatla Road, Guntur District.

In the counter affidavit and additional counter affidavit, it is stated that the auction notice was issued under the provisions of the SARFAESI Act and auction was conducted on 12.10.2015. It is also stated that on the date of auction, only one bidder by name K.V.Gopalkrishna participated in the auction and he stood as the highest bidder, and accordingly, the Bank has confirmed the sale in his favour for Rs.40,60,000/- as against the reserve price of Rs.40,50,000/- and he has paid 25% of the bid amount i.e., Rs.10,15,000/- on the date of auction itself. It is further stated that the auction purchaser has paid Rs.21,30,000/- on 02.11.2015 and he has to pay balance sum of Rs.9,15,000/-.

As per Rule 9 (3) and (4) of the Security Interest (Enforcement) Rules, 2002, the purchaser has to pay 25% of sale price on the date of auction and the balance amount shall be paid before the 15th day of confirmation of sale or as agreed in writing between the parties.

During the course of hearing, it is fairly submitted by learned counsel for the respondent Bank that there is no agreement in writing fixing any time schedule for payment of the balance amount by the auction purchaser.

In view of the above and as the auction was held on 12.10.2015, on which date the auction purchaser is stated to have paid 25% of the sale price i.e., Rs.10,15,000/-, the balance amount was to be paid by him before the 15th day of confirmation of sale i.e., 27.10.2015. As admittedly the purchaser has not paid the balance amount by 27.10.2015, such amount cannot be accepted from him at this stage.

However, learned counsel for the petitioner submitted that the petitioner is taking steps to settle his loan account by approaching the respondent Bank for One Time Settlement.

For the aforesaid reasons, the writ petition is allowed and the sale notice dated 20.08.2015, the subsequent corrigendum notice, dated 24.09.2015, and the auction conducted on 12.10.2015 are set aside. It is open to the petitioner to approach the respondent Bank and settle his loan account. If the petitioner fails to settle his account, it is open to the respondent Bank to take steps for auction of the secured asset in accordance with law. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

17.11.2015

v v