HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.3381 of 2015

ORDER : (Per Justice R.Subhash Reddy)

This writ petition is filed, seeking Writ of Certiorary to call for the records in S.A.No.568 of 2014 pending on the file of the 8th respondent/Debts Recovery Tribunal, Hyderabad, and prohibit the said Tribunal from proceeding to pass any orders in the aforesaid S.A. and to quash the order dated 26.12.2014, passed by the Tribunal.

The 1st respondent/Industry has availed cash credit facility of Rs.24,00,000/- for its business requirements and executed loan document in favour of 5th respondent-bank. The said cash credit facility is secured by way of mortgage of immovable property i.e. undivided share of land admeasuring 88.75 square yards with a building thereon, situated at Kanjarguda, Old Bhoiguda, Secunderabad. As the borrower has defaulted in paying the loan amount, the said loan account was classified as non-performing asset on 19.04.2014 and the demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') was issued demanding an amount of

Rs.24,63,236/- as on 19.04.2014. As the payment was not made even after receiving the demand notice, bank has taken further steps by issuing possession notice for taking symbolic possession and after issuing notice of intended sale, has issued the auction sale notice on 02.09.2014.

At that stage, respondents 1 to 4 herein have approached the Debts Recovery Tribunal by way of Securitisation Application questioning the possession notice issued under Section 13(4) of the SARFAESI Act and the same is numbered as S.A.No.568 of 2014. In the interlocutory application filed, a conditional interim order was passed on payment of Rs.5,00,000/-. Though some amount was paid, as the condition imposed is not fully complied with, the 5th respondent-bank has proceeded further and issued fresh sale notice dated 01.11.2014, fixing the date of auction as 05.12.2014. Borrower has again filed three interlocutory applications in I.A.Nos.4940, 4941 and 4942 of 2014 seeking for advancement of hearing, for stay of proposed auction and for amendment of pleadings in the S.A. On 05.12.2014, auction was conducted and the writ petitioners claim that they are the successful bidders in the said auction, having offered an amount of Rs.46,00,000/- as against the reserved price of Rs.45,90,000/-. The 25% of the bid amount was paid on the date of auction and the remaining

75% was paid on 09.12.2014. The bank has issued sale certificate and it is stated that the sale certificate was also registered in the office of the Sub-Registrar, Marredpally vide document No.2875 of 2014, on 11.12.2014.

Thereafter, the borrowers have filed four interlocutory applications in I.A.Nos.5297, 5298, 5299 and 5300 of 2014, seeking advancement of the S.A., stay of dispossession, set aside the sale and to restrain the auction purchasers from creating any encumbrance on the property. The Debts Recovery Tribunal has advanced the hearing of S.A. and passed order dated 26.12.2014, observing that the borrower is prepared to tender all the dues payable to the bank including the costs and other incidental charges incurred, so as to get the property redeemed under Section 13(8) of the SARFAESI Act, and as the schedule property is not delivered to the auction purchasers, the 5th respondent-bank is directed not to proceed further regarding physical possession of the schedule property and the petitioners are directed not to create any interest over the schedule property. The petitioners, who are auction purchasers in the auction held on 05.12.2014, have questioned the said order dated 26.12.2014, and also sought for Writ of Prohibition, prohibiting the Tribunal from passing further orders in the matter.

Heard Sri Amancharla V.Gopala Rao, learned counsel for petitioners, Sri J.V.Suryanarayana, learned Senior Counsel appearing for respondents 1 to 4 and Sri Ambadipudi Satyanarayana, learned counsel appearing for the 5th respondent-bank.

Mainly, it is the case of petitioners that the impugned order is passed by misconstruing the provision under Section 13(8) of the SARFAESI Act. It is contended that Section 13(8) will apply only to the cases where the dues of the secured creditor together with all costs, charges and expenses are tendered before the date of sale of secured asset. It is submitted that though the sale certificate is issued and the same is also registered on 11.12.2014, Section 13(8) is misconstrued and the impugned order is passed. It is further submitted that as the petitioners are *bona fide* purchasers for valuable consideration, there is no reason for passing the impugned order.

On the other hand, Sri J.V.Suryanarayana, learned Senior Counsel appearing for respondents 1 to 4 submitted that the sale is not conducted in conformity with the Rules and provisions of the Act. It is submitted that though the value of property is more than Rs.75,00,000/-, the reserved price is fixed at Rs.45,90,000/- and only one bidder has participated in the auction and offered bid for Rs.46,00,000/-, which is just Rs.10,000/- more than the reserved price. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of **Authorised Officer, Indian Overseas Bank & another v. Ashok Saw Mill**[1], to substantiate his argument that even the post-Section 13(4) proceedings can be assailed before the Debts Recovery Tribunal and the Tribunal is empowered not only to set aside the sale but also to order for restoring *status quo ante*. It is further submitted that in view of the pendency of appeal and various interlocutory applications, there is no reason for seeking Writ of Prohibition at this stage, as the matter is to be considered by the Tribunal.

Sri Ambadipudi Satyanarayana, learned counsel for the 5th respondent-bank submits that though the Tribunal has passed conditional interim order earlier, respondents 1 to 4 have not complied with the same and in view of the observations made in the said interim order, further steps were taken to conduct auction of secured asset on 05.12.2014 and as the petitioners herein have emerged as successful bidders in the auction, sale is confirmed and sale certificate is also registered in their favour.

In this case, it is not in dispute that pursuant to the auction held on 05.12.2014, possession of property is not delivered to the auction purchasers. Initially, respondents 1 to 4 herein have filed Securitisation Application in S.A.No.568 of 2014 questioning the possession notice issued under Section 13(4) of the SARFAESI Act, but subsequently, when sale is conducted, further applications are filed in I.A.Nos.5297, 5298, 5299 and 5300 of 2014, seeking advancement of the S.A., stay of dispossession, set aside the sale and to restrain the auction purchasers from creating any encumbrance on the property. The validity of sale as questioned by respondents 1 to 4, is a matter to be considered by the Tribunal in the pending S.A.No.568 of 2014. Only on the ground that the impugned order is passed by misconstruing the provision under Section 13(8) of SARFAESI Act, petitioners are not entitled to seek Writ of Prohibition prohibiting the Tribunal from proceeding further. The remedy provided under Section 17 of SARFAESI Act is a Statutory remedy available to the aggrieved person. Respondents 1 to 4, at first instance, are aggrieved of issuing possession notice, and thereafter, by amending the pleadings by filing various interlocutory applications, have questioned the very sale in the auction conducted on 05.12.2014. In that view of the matter, it is for the Tribunal to go into the same and pass appropriate orders. Though it is submitted by Sri J.V.Suryanarayana, learned Senior Counsel appearing for respondents 1 to 4 that pursuant to the impugned order, respondents 1 to 4 have obtained demand draft for the entire amount including costs and expenses and deposited the same along with a Memo, the same is a matter to be considered by the Debts Recovery Tribunal.

As much as the order impugned is only an interlocutory order and various miscellaneous applications and S.A. itself is to be disposed of by the Tribunal, this Court is of the view that it is not necessary to go into the validity of the impugned order at this stage, and we deem it appropriate to dispose of the writ petition with a direction to the Debts Recovery Tribunal to dispose of the appeal pending in S.A.No.568 of 2014, after disposing of the interlocutory applications filed by the petitioners on one hand and respondents 1 to 4 on the other hand. The appeal be disposed of on its own merits uninfluenced by any of the observations made in the interlocutory orders passed by this Court or the Tribunal earlier. Further, there shall be a direction to the respondents to maintain status quo as on today till the disposal of S.A.No.568 of 2014. The said appeal be disposed of as expeditiously as possible, preferably within a period of three months from the date of receipt of this order.

Subject to the above observations, the writ petition is disposed of. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

7th August 2015

ajr

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[1] (2009) 8 SCC 366