

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

-
WRIT PETITION No.19512 OF 2015

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

Heard Sri K. Mallikarjuna Rao, learned counsel for the petitioner, and Sri Ambadipudi Satyanarayana, learned counsel appearing for respondent No.1 – Bank.

This Writ Petition is filed by the Bank of Baroda questioning the order, dated 18.03.2015, passed in I.A.No.2884 of 2013 in I.A.No.1023 of 2009 in O.A.No.191 of 2009 by the Debts Recovery Tribunal, Hyderabad.

The aforesaid O.A. was filed by respondent No.1 – Bank against respondent Nos.2 to 5 for recovery of its dues. In the said O.A., respondent No.1 – Bank has also filed I.A.No.1023 of 2009 seeking conditional attachment of 'C' schedule property shown in the petition. The Tribunal, by order, dated 15.10.2009, has passed the following order:

“1. There shall be interim attachment in respect of Application 'C' schedule property on condition of providing security or deposit of OA claim on or before 17.11.2009.

2. The petitioner shall take notice in I.A.No.1023 of 2009 on all the respondents by Registered Post/Acknowledgement Due, Courier and also by publishing a notice in Andhra Jyothi daily newspaper including order

of attachment.

The matter is posted to 17.11.2009.”

In I.A.No.1023 of 2009, petitioner – Bank filed a separate application in I.A.No.2884 of 2013 seeking to implead it as party respondent in I.A.No.1023 of 2009 on the ground that the petition schedule property, which was the subject matter of attachment, is also mortgaged to the petitioner on 31.07.2010. The Tribunal, by impugned order, dated 18.03.2015, dismissed the said application on the ground that the conditional attachment order, dated 15.10.2009, was already given effect to and the only option left to the petitioner – Bank is to file a separate application to adjudicate its claim over the attached property.

In this Writ Petition, it is submitted by the learned counsel for petitioner that the interim attachment is only up to 17.11.2009 and as no order was passed thereafter, attachment is not deemed to be continuing and as such, the property in question was mortgaged to the petitioner on 31.07.2014 and in view of the interest created in favour of the petitioner – Bank, it is a necessary party while adjudicating I.A.No.1023 of 2009.

From a perusal of the interim order, dated 15.10.2009, it is clear that attachment is not restricted up to 17.11.2009. It is the date fixed for providing security or

depositing O.A. claim and it does not mean that attachment is also restricted up to 17.11.2009. It is also not in dispute that pursuant to the attachment order, respondents in I.A.No.1023 of 2009 have not provided any security or deposited the O.A. claim. In that view of the matter, attachment order, dated 15.10.2009, is deemed to be continuing. As there is attachment of the property in question in favour of respondent No.1 – Bank prior to mortgaging it with the petitioner, if the petitioner - Bank is having any interest over it, it is open to it to file independent application as ordered by the Tribunal, but we do not find any merit in the Writ Petition so as to interfere with the impugned order passed by the Tribunal.

Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

JUSTICE R.SUBHASH

REDDY

JUSTICE A.SHANKAR

NARAYANA

July 01, 2015
MD