THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.567 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner, who claims to have entered into an agreement of sale with the borrower on 31.05.2011, invoked the jurisdiction of the Debt Recovery Tribunal (for brevity, 'DRT'), Hyderabad under Section 17 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for brevity, 'the Act'). Along with the appeal he filed an application requesting the DRT to stay all further proceedings including the notice of auction-cum-sale dated 04.12.2014 whereby the date of auction was declared as 19.01.2015.

By the order under challenge i.e. I.A.No.213 of 2015 in S.A.No.30 of 2015, the DRT observed that the petitioner would not acquire any better title or rights over the schedule property under the agreement of sale as it would not convey any rights to the transferee since it is not covered by a "sale" as defined under Section 54 of the Transfer of Property Act; unless and until the title of the schedule property is legally transferred to the transferee by executing a registered sale deed, no right would accrue in his favour to deal with the property; when the mortgage was validly created in favour of the respondent by his borrower, the petitioner cannot agitate any rights over the schedule property as the respondent bank is having a prior charge over the property in view of the mortgage; there was no *prima facie* case; the balance of convenience is not in favour of the petitioner; the respondent bank, a secured creditor, would suffer heavy loss and injury in case any ad-interim orders are granted in favour of the petitioner; and, therefore, an urgent notice should be issued to the respondent bank. The Interlocutory Application was directed to be called on 03.02.2015.

Sri V.V.Ramana, learned counsel for the petitioner, while fairly stating that an equitable mortgage by deposit of original title deeds was created in favour of the respondent bank by the borrower on 08.12.2004 more than 6½ years prior to the agreement of sale dated 31.12.2011, would however contend that the petitioner is nonetheless entitled to invoke the jurisdiction of the DRT under Section 17 of the Act. Learned counsel would draw attention of this Court to Rule 8 (6) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Rules, 2002 (for brevity, 'the Rules') to submit that the authorized officer is required to serve, on the borrower, a notice of thirty days for sale of movable security assets; and, though the borrower died on 25.07.2013, no notice was served on the legal heirs of the deceased borrower.

This Court, in proceedings under Article 226 of the Constitution of India, does not sit in appeal over orders of the DRT. As such interference, even in case of interlocutory orders, is more an exception than the rule. In the present case the petitioner's application in I.A.No.213 of 2014 has not even been dismissed. All that the DRT has done is to issue urgent notice to the bank, and has directed that the matter be called on 03.02.2015. The petitioner is not the legal heir, of the deceased borrower, who could have claimed to have suffered prejudice on account of non-compliance with Rule 8(6) of the Rules. In any event all these contentions can be raised before the DRT when the I.A is taken up for hearing on 03.02.2015.

Reliance placed by Sri V.V.Ramana, learned counsel for the petitioner, on **Jagdish Singh v. Heeralal and others**[1], is misplaced. In **Jagdish Singh**, it was held that the expression 'any person' used in Section 17 of the Act would take within its ambit the plaintiff in the suit also. In the present case the petitioner has invoked the jurisdiction of the DRT under Section 17 of the Act and it is not as if he has been non-suited on the ground that his appeal is not maintainable.

Viewed from any angle, we see no reason to interfere with the order of the DRT merely directing notice to the respondent bank. The Writ Petition as filed is wholly misconceived and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

21st January, 2015.
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[1] 2014 (1) SCC 479