

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

WRIT PETITION No.28302 of 2015

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

This writ petition is filed by the petitioner seeking the following relief:

“..... Writ of Mandamus declaring the action of the respondent in not considering the petitioner's oral representation as unjust, arbitrary and against principles of natural justice, consequently direct the respondent Bank to consider the petitioner's request to pay the amount of Rs.17,65,000/- in 6 instalments and to fix some time for the same in the interest of justice”

2. The 2nd respondent has borrowed a sum of Rs.40,00,000/- from the 1st respondent-Bank on 10.05.2012 for starting a business, to which the petitioner stood as a guarantor. As there is a default committed in payment of instalments by the 2nd respondent, the 1st respondent-Bank has initiated proceedings and issued a Notice dated 10.12.2013 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity “the SARFAESI Act”) demanding to pay an amount of Rs.44,86,474/- along with interest. When the said demand was not complied with, the 1st respondent-Bank, after issuing necessary possession notice under Section 13(4) of the SARFAESI Act, has issued the impugned E-Auction Sale Notice dated 24.10.2014 to sell the secured assets belonging to the petitioner. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner contends that the petitioner, being the guarantor, has paid a sum of Rs.3,35,000/- even before filing the writ petition and pursuant to the orders of this Court dated 16.09.2015, he has also paid a sum of Rs.4,00,000/-. The learned counsel would further contend that as the petitioner is prepared to pay the balance amount after deducting upset price of Rs.21,00,000/- and a sum of Rs.7,35,000/-, which was already paid, there is no reason in selling the secured assets.

4. In the counter affidavit filed on behalf of the 1st respondent-Bank, while denying various allegations made by the petitioner, it is categorically stated that the petitioner and 2nd respondent are liable to pay the entire dues of Rs.44,86,474/- and interest thereon.

5. In view of the statement made by the 1st respondent-Bank in the counter affidavit, it is not clear whether the petitioner is liable to pay the entire loan amount by giving personal bank guarantee or he is liable to the extent of his secured assets, which are notified for sale pursuant to the E-Auction Sale Notice dated 24.10.2014. Therefore, we are not inclined to grant the relief sought for in the writ petition.

6. However, in view of the request made by the petitioner, we deem it appropriate to dispose of the writ petition permitting the petitioner to make a representation to the 1st respondent-Bank within a period of one week from today and if any such representation is made within the said period, the 1st respondent-Bank shall pass appropriate orders and communicate the same to the petitioner. Till such orders are passed, no further steps shall be taken to auction the secured assets of the petitioner. It is made clear that if no such representation is made within the stipulated time, it is open to the 1st respondent-Bank to take further steps in accordance with law, after adjusting the amount already paid by the petitioner to the loan account of the 2nd respondent.

7. Subject to the above directions, this writ petition is disposed of, at the admission stage. As a sequel, miscellaneous petitions

pending, if any, shall stand closed. No order as to costs.

8. The petitioner to append a copy of this order to the representation being made to the 1st respondent-Bank.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

04.112015.

NOTE: Issue C.C. by 05.11.2015.

(B/O)

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

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