THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.29839 of 2014

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

This writ petition is filed questioning the action of respondents 1 to 4, in putting the subject property of the petitioner (item No.2 of the sale notice dated 13.08.2014) to sale in public auction on 22.09.2014, as arbitrary and illegal.

The petitioner claims to have purchased the property, by way of a registered sale deed dated 02.07.2012 along with Sri A.Venkat Reddy, from a person who stood as guarantor for the loan taken from the respondent-Bank. The petitioner's vendor Sri V.Bayanna (respondent No.5 herein) had mortgaged the subject property as a guarantee for the loan as early as in the year 2005. Thereafter, proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act"), and a notice under Section 13(2) thereof was issued on 13.08.2014. After possession was taken, the subject property was put to sale.

The petitioner, along with Sri A.Venkat Reddy, invoked the jurisdiction of this Court. A Division Bench of this Court, by order in W.P.No.3606 of 2014 dated 07.07.2014, held that the petitioners ought to have verified whether the property, which they were purchasing, was subject to any mortgage or any other encumbrance; no such steps had been take by them before purchasing the property; therefore, on their own showing, the petitioners were not *bona fide* purchasers; therefore the mortgage would prevail over the subsequent sale; and, in the absence of any steps being taken to pay the mortgage amount, the writ petition was totally devoid of merits and was liable to be dismissed. The order of the Division Bench, in W.P.No.3606 of 2014 dated 07.07.2014, has attained finality. Thereafter, the borrower of the loan entered into a One Time Settlement (OTS) with the respondent-Bank. While sanctioning the OTS, by its proceedings dated 13.02.2015 , the respondent-Bank called upon the borrower to pay Rs.3.30 crores in full and final settlement of the dues i.e., Rs.1.00 crore to be payable immediately; and the balance of Rs.2.30 crores payable before 30.06.2014.

As the borrower failed to adhere to the terms of the OTS he was informed, by proceedings dated 11.07.2014, that, since he had failed to comply with the terms of the OTS, the OTS stood cancelled, and he was liable to pay the total present outstanding dues of Rs.3,55,45,657.05 plus interest. Auction was held thereafter on 22.09.2014, and the highest bid received in the auction is said to be for Rs.1.20 crores. The auction purchaser is said to have deposited 25% of the bid amount and, before the time stipulated for payment of the balance 75% expired, this Court granted stay by its order dated 01.10.2014. The auction purchaser is said to have intimated the respondent-Bank that he was ready to pay the balance 75% bid amount, but could not do so in view of the interim order. The respondent-Bank informed the auction-purchaser, by letter dated 09.10.2014, that they were unable to accept the balance 75% of the bid amount since they had received a copy of the interim order passed by this Court.

Sri I.Venkata Prasad, learned counsel for the petitioner, would submit that, pursuant to the interim order passed by this Court, a sum of Rs.60,25,000/- has since been paid. As the order of the Division Bench of this Court, in W.P.No.3606 of 2014 dated 07.07.2014, has attained finality, the petitioner herein cannot now be heard to contend that they are *bona fide* purchasers of the subject property. Since the property can be redeemed, in terms of Section 13(8) of the SARFAESI Act, at any time before the date fixed for sale or transfer of the secured asset, and as no sale certificate has been issued till date and the auction purchaser has not yet paid the balance 75% of the bid amount, we consider it appropriate to dispose of the writ petition permitting the petitioner to pay the entire balance amount due to the respondent, and to redeem the debt, on or before 15.06.2015 failing which it is open to the respondent-Bank to proceed and take action in accordance with law.

The writ petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

09th April 2015.

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Date: 09.04.2015

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