THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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WRIT PETITION No.14439 OF 2015

ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This writ petition is filed seeking to issue a writ of Mandamus declaring E-Auction Sale Notice, dated 11.4.2015, fixing the auction of the properties on 15.5.2015 by the respondent Bank in respect of land admeasuring Ac.1.84 cents along with buildings, cellar, ground and three floors admeasuring 99,455 sq.yards of plinth area in Sy.No.106/2 situated at Kondapalli, Ibrahimpatnam Mandal, Krishna District as illegal and arbitrary and consequently, to set aside the other proceedings of respondent No.1.

2. The petitioner availed term loan from the respondent Bank. As the petitioner committed default in repayment of the entire loan amount, the respondent/Bank declared the account of the petitioner as a Non-performing Account. The authorities of the respondent Bank issued a notice, dated 11.1.2013, under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") and a Sale Notice, dated 21.1.2015, for auction to be held on 27.2.2015. Challenging the same, the petitioner filed S.A.No.50 of 2015 before the Debts Recovery Tribunal, Visakhapatnam. The said sale was stayed on 26.2.2015 on condition of the petitioner depositing 25% of the claim amount within six weeks i.e., on or before 9.4.2015. As the said condition was not fulfilled, sale notice, dated 11.4.2015, was issued. Grievance of the petitioner is that E-Auction Sale Notice, dated 11.4.2015, was published in Eenadu Telugu Daily Newspaper for sale of secured assets under SARFAESI Act fixing the E-auction to be held on 15.5.2015 in respect of the application schedule properties and that the respondent Bank did not issue any notice to the petitioner and that the

Debts Recovery Tribunal is not functioning due to non-appointment of Presiding Officer. Challenging the said sale notice, the present writ petition is filed.

3. Learned counsel for the petitioner stated that the petitioner is ready to pay the entire due amount to the respondent/Bank, if reasonable time is granted to it.

4. On the other hand, learned counsel appearing for respondent/Bank opposed the same and prays to dismiss the writ petition.

5. The respondent/Bank is interested only to recover the entire due amount. Petitioner appears to be a *bona fide* debtor. When the petitioner is ready to clear the entire due amount to the Bank, there is no point in bringing the mortgaged properties to sale. In these circumstances, we feel that reasonable time can be granted to enable the petitioner to pay the entire amount due to the Bank. Therefore, we direct the petitioner to pay the entire outstanding loan amount to the Bank within a period of ten (10) weeks from the date of receipt of a copy of this order. However, the E-auction can go on, but sale shall not be confirmed. If the petitioner fails to fulfil the above condition within the stipulated time, the respondent Bank is at liberty to confirm the sale and issue sale certificate to the highest bidder/auction purchaser. Registry is directed not to entertain any application seeking “Extension of Time” or “For being mentioned” in this regard.

6. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE M.S.K.JAISWAL

Date: 14.5.2015

AMD/PRV

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THE HON'BLE SRI JUSTICE K.C.BHANU

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<u>WRIT PETITION No.14439 OF 2015</u>

DATE: 14.5.2015

AMD/PRV