THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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WRIT PETITION No.35647 of 2015

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

This writ petition is filed for a Mandamus to declare the action of the respondent Bank in taking physical possession of the secured assets and also issuing e-auction notice dated 01.10.2015 to sell the secured assets, as illegal and arbitrary.

The impugned e-auction notice issued by the respondent Bank under the provisions of the SARFAESI Act states that an amount of Rs.5,44,58,353.47 ps is due as on 31.08.2015.

It is the case of the petitioner that on the representation made by her, though One Time Settlement was permitted by proceedings dated 25.07.2014, the respondents have taken steps to dispossess her from the secured assets, without giving reasonable time. It is the further case of the petitioner that as per the proceedings, dated 25.07.2014, the account was settled at Rs.505.00 lacs and she was required to pay Rs.25,00,000/- within a period of seven days, which was wrongly mentioned as 25%. It is also her case that the respondent Bank has agreed to release the property covered by D.No.74-12-2-2 on Plot No.67 of RS.No.201/1 situated at Electricity Colony, Patamata, Vijayawada Municipal Corporation, on payment of Rs.317.00 lacs and that simultaneously, the property at Plot No.153, IDA, Bolaram, Hyderabad, was permitted to be disposed of by the petitioner and released on payment of balance settlement amount.

In this case, it is contended by learned counsel for the petitioner that in spite of permitting OTS, the respondents have issued e-auction sale notice, dated 01.10.2015, without issuing any notice of sale as contemplated under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 framed under the SARFAESI Act.

On the other hand, it is submitted by learned counsel appearing for the respondent Bank that though OTS was accepted by proceedings dated 25.07.2014, the amount which is payable in seven days as per the OTS is 25%, but not Rs.25,00,000/- as alleged. It is submitted that as the petitioner has failed to comply with the conditions of OTS and also the orders extending time for payment of the OTS approved amount, the respondents have taken further steps to sell the secured assets. At the same time, it is fairly conceded by learned counsel for the respondent Bank that before issuing the e-auction sale notice under the SARFAESI Act, the respondent Bank has not issued any notice of sale as contemplated under Rule 8 (6) of the Rules framed under the SARFAESI Act.

As per the Rules framed under the SARFAESI Act, before sale of the secured asset by way of e-auction, there must be a notice of sale giving 30 days' time to the borrower. As admittedly such notice of sale is not issued, the impugned e-auction sale notice cannot be sustained. On this short ground, the impugned e-auction sale notice is quashed and we permit the respondent Bank to initiate fresh proceedings in accordance with law for realization of the loan amount. It is further made clear that if any purchasers are brought by the petitioner, the respondent Bank shall allow the petitioner and the purchasers to inspect the secured assets for the purpose of settling the sale consideration. However it is also made clear that possession of the secured assets shall continue with the respondent Bank only.

Subject to the above, the writ petition is disposed of. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

04.11.2015

Note: Issue CC in two days

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