

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

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WRIT PETITION No.720 of 2015

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

The petitioner herein is the guarantor of the loan obtained by the second respondent from the first respondent bank. Respondents 3 and 4 herein are the Managing Director and Director of the second respondent company. On the ground that they had defaulted in repayment of the loan, an e-auction sale notice dated 10.12.2014 was issued by the first respondent bank to bring the schedule property to sale. Respondents 2 and 3 herein approached the Debt Recovery Tribunal (for brevity 'DRT') by way of S.A.No.6 of 2015. They filed I.A.No.9 of 2015 seeking stay of all further proceedings pursuant to the e-auction sale notice dated 10.12.2014. By its order dated 19.01.2015, the DRT directed the first respondent bank to proceed with auction of the schedule property on 21.01.2015. The first respondent bank was, however, directed not to issue a sale certificate to the auction purchaser on condition that respondents 2 and 3 deposited 30% of the amount, claimed by the first respondent bank in the e-auction sale notice dated 10.12.2014, within fifteen days from the date of the auction directly with the first respondent bank. The DRT made it clear that, in the event the amount was not so deposited, the first respondent bank could issue the sale certificate in favour of the auction purchaser, and such sale would be subject to the result of S.A.No.6 of 2015.

Respondents 2 and 3 invoked the jurisdiction of this Court by way of W.P.No.2138 of 2015. An affidavit of undertaking was filed by the third respondent herein undertaking to deposit the amount, as ordered by the DRT in I.A.No.9 of 2015 in S.A.No.6 of 2015, within two weeks. In view of the affidavit of undertaking submitted by the third respondent herein, this Court disposed of W.P.No.2138 of 2015 by its order dated 05.02.2015 permitting respondents 2 and 3 herein to deposit the amount, as directed by the DRT, with the first respondent bank on or before 19.02.2015. The

first respondent bank was directed not to issue the sale certificate till 20.02.2015. This Court made it clear that, in case the amount directed by the DRT was not deposited on or before 19.02.2015 to the first respondent bank, it was open to the first respondent bank to issue the sale certificate thereafter.

The petitioner herein, who is none other than the brother of the third respondent, filed this Writ Petition before this Court on 17.01.2015 after his brother had invoked the jurisdiction of the DRT. In the affidavit of undertaking dated 05.02.2015, filed in the present Writ Petition, the petitioner states that he would pay the amount due to the first respondent bank, with respect to the loan account of the second respondent with the first respondent bank, within a period of twelve weeks without prejudice to his right to claim repayment of the money from respondents 2 to 4 who are the principal borrowers. As the petitioner's brother (third respondent) had given an undertaking earlier to this Court to repay 30% of the loan amount, as directed by the DRT, on or before 19.02.2015, hearing of this Writ Petition was adjourned from 09.02.2015 to 20.02.2015.

Sri K.Suryanarayana Murthy, learned counsel for the respondents, on instructions, states that not even a single rupee has been paid by the third respondent herein pursuant to the undertaking given by him in W.P.No.2138 of 2015.

It would be wholly inappropriate for us, therefore, to exercise discretion under Article 226 of the Constitution of India to interfere or to grant the petitioner herein time to repay the loan amount when his brother, who submitted an undertaking earlier, has not complied with the undertaking. We see no reason, therefore, to interdict the first respondent bank from taking action in accordance with law. It is made clear that this order shall not preclude the petitioner herein from approaching the first respondent bank seeking time to repay the entire loan amount within a specific duration. The order now passed shall also not preclude the first respondent bank from considering any such request in accordance with law.

The Writ Petition stands disposed of accordingly. 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

20th February, 2015.
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