THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 6572 OF 2015

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

As the notice sent to the 4th respondent, to the address given by them before the Debts Recovery Tribunal at Hyderabad ("the Tribunal" for short), was returned un-served, this Court, by order dated 13-03-2015, permitted the learned counsel for the petitioner to take out notice on the counsel for the 4th respondent before the Tribunal. Despite service of notice on Sri T.Sridhar Reddy, learned counsel for the 4th respondent before the Tribunal, neither is he present nor is the 4th respondent represented by learned counsel before this Court. Heard Sri M.Yeshwanth Kumar, learned counsel for the petitioner, and Sri E.Madan Mohan Rao, learned counsel for the 3rd respondent bank, and, with their consent, this Writ Petition is being disposed of at the admission stage.

This is a curious case where the petitioner's (guarantor) property has been permitted to be put to sale by the Tribunal at the instance of the applicant who however ensured, by obtaining an order from the Tribunal, that their properties were not put to sale. Facts to the limited extent necessary are that the 4th respondent, represented by its managing partner Sri J.Venkateshwarlu, invoked the jurisdiction of the Tribunal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("2002 Act" for brevity), by filing S.A.No. 194 of 2014 questioning the sale notice issued by the 3rd respondent bank dated 28-02-2014. They filed I.A.No. 1073 of 2014 seeking stay of all further proceedings including sale of the schedule property to be held on 30-03-2014, and physical possession being taken thereof. By its order dated 27-03-2014, the Tribunal directed the 4th respondent to deposit, directly with the 3rd respondent, a sum of Rs.20,00,000/-, out of which Rs.10,00,000/- was directed to be deposited within two weeks from the date of the order, and the balance Rs.10,00,000/- within two weeks thereafter. The 3rd respondent bank was directed to postpone the auction sale of the schedule property proposed to be held on 30-03-2014. The Tribunal observed that, in the event the 4th respondent herein failed to deposit the amounts as stated in the order, the 3rd respondent bank was at liberty to proceed with the sale of the schedule property by dispensing with the issuance of a fresh auction notice, however under due intimation to the 4th respondent, subject to the result of the S.A.

Contending that he had complied with the order of the Tribunal dated 27-03-2014 in part, the 4th respondent filed I.A.No. 2307 of 2014 seeking further time of eight more weeks for payment of the balance amount of Rs.7,00,000/-. By its order dated 07-07-2014, the Tribunal directed the 4th respondent to deposit Rs.10,00,000/- within two weeks from the date of the order directly with the 3rd respondent bank, and directed the 3rd respondent bank to postpone the auction proposed to be held on 09-07-2014. The Tribunal directed that, in case the 4th respondent failed to deposit the amount, the 3rd respondent bank was at liberty to proceed with the auction sale, by dispensing with issuance of a fresh sale notice, however under intimation to the 4th respondent. The 3rd respondent bank was, however, directed not to confirm the sale of the schedule property until further orders.

It is, indeed, disconcerting to note that, while the earlier order of the Tribunal dated 27-03-2014 permitted the 3rd respondent bank to proceed with the auction, and in case of non-compliance with its order, by the 4th respondent, the sale was made subject to the result of the S.A., the subsequent order dated 07-07-2014, while permitting the 3rd respondent bank to proceed with the auction, required the 3rd respondent bank, in case of non-compliance of the order of the Tribunal by the 4th respondent, not to confirm the sale. As a result of the order of the Tribunal dated 27-03-2014, even if the 4th respondent had failed to comply with the order of the Tribunal, the 3rd respondent bank was precluded from confirming the sale.

Even more startling is that the 4th respondent should file I.A.No. 400 of 2015 to modify the stay order passed by the Tribunal dated 27-03-2014, seeking continuance of the earlier order of stay only in respect of item Nos. 1 and 2 of the schedule property, and to vacate the stay in respect of item No. 3 of the schedule property so as to enable the 3rd respondent bank to proceed with the sale of item No. 3 of the schedule properties. In its order dated 22-01-2015, the Tribunal recorded that the 3rd respondent bank had endorsed its no objection on the petition; accordingly, the order dated 27-03-2014 was modified; and there should be a stay of all further proceedings of the 3rd respondent bank, pursuant to the sale notice dated 28-02-2014, in respect of item Nos. 1 and 2 of the schedule property only. It is even more disconcerting that the Tribunal should have passed such an order at the behest of the owner of item Nos. 1 and 2, and without the owner of item No. 3 even being made a party to the I.A., let alone being heard before such an order was passed. The deponent, of the affidavit in I.A.No. 400 of 2015, is Sri J.Venkateshwarlu, who is also the managing partner of the 4th respondent. In the affidavit filed in support of I.A.No. 400 of 2015, Sri J.Venkateshwarlu suppressed the fact that, while item Nos. 1 and 2 of the schedule property belonged to him and his daughter respectively, item No. 3 of the schedule property belonged to the petitioner herein who was not even a party before the Tribunal. It is also a matter of grave concern that the 3rd respondent bank, which had a right to proceed against all or any one of the three items of the schedule properties, should endorse its no objection to item No. 3 of the schedule property alone being put to sale, and the stay in respect of item Nos. 1 and 2 of the schedule properties being continued. It defies reason that an application, at the behest of owners of item Nos. 1 and 2 of the schedule properties, should be entertained by the Tribunal, and an order passed permitting the 3rd respondent to proceed with the sale of item No. 3 of the schedule property which does not belong to the 4th respondent or Sri J.Venkateshwarlu who is its managing partner, but to the petitioner herein who was not a party before the Tribunal. While the unilateral modification by the Tribunal, in the orders passed by it from time to time, gives rise to the suspicion that all is not well in the manner of its functioning, we refrain from saying anything more.

The order of the Tribunal in I.A.No. 400 of 2015 in S.A.No. 194 of 2014 dated 22-01-2015 is set aside. Pursuant to the order of the Tribunal dated 22-01-2015, the 3rd respondent bank issued sale notice dated 09-02-2015 specifically referring to the order of the Tribunal vacating the stay in respect of item No. 3 of the schedule properties. Consequently, the sale notice dated 09-02-2015 is also set aside. While we would, ordinarily, have refrained from directing the Tribunal to dispose of the matter within a specified timeframe, the order passed by the Tribunal dated 07-07-2014 in I.A.No. 2307 of 2014 requires the 3rd respondent bank not even to confirm the sale even in case of non-compliance of the earlier order by the 4th respondent. The Tribunal shall, at the earliest and in any event not later than six months from the date of receipt of a copy of this order, dispose of S.A.No. 194 of 2014 in accordance with law.

The Writ Petition is, accordingly, allowed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

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RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 25th March, 2015.

JSK