

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT PETITION No.14589 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the action of the respondents-Bank in keeping the business premises of the 1st petitioner bearing New Door No.297 (old Door No.119) and Old Door No.120 of 2 items, situated at Trunk Road, Nellore, SPSR Nellore District, under lock and key and in obstructing the day-to-day business activity of the petitioners through the above premises, pending adjudication of Securitisation Appeal, S.A.No.282 of 2014 on the file of the Debts Recovery Tribunal, Visakhapatnam, as arbitrary and illegal.

2. The 1st petitioner, to which the 2nd petitioner is the Proprietor, has availed a loan of Rs.90.00 Lakhs from the 1st respondent-Bank. As the 1st petitioner failed to repay the loan amount, the 1st respondent-Bank, being a secured creditor, has initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and e-auction notice was issued on 15.10.2014 for conducting sale of secured assets of the petitioners on 18.11.2014. The petitioners have questioned the same by way of Securitisation Appeal, S.A.No.282 of 2014 before the Debts Recovery Tribunal, Visakhapatnam. As on the date of conducting

auction, there was no interim order. As the respondents-Bank has filed caveat, the matter was adjourned and before passing interim order of *status quo* on 2.12.2014, auction was conducted on 18.11.2014 and the auction purchaser has deposited 25% of bid amount on the date of sale and also deposited the remaining 75% of the bid amount through RTGS on 1.12.2014 and the sale certificate was also issued in his favour. Subsequently, the Debts Recovery Tribunal has passed interim orders on 2.12.2014. It is stated that there is a stock in trade worth more than Rs.1.00 Crore inside the business premises of the petitioners, which itself is sufficient to meet the debt of the respondent-Bank. The petitioners seek leave for removal of lock and key so as to do the business.

3. The respondents have filed a counter affidavit. While denying various allegations made in the writ petition, it is stated that pursuant to auction notice dated 15.10.2014, auction for sale of the mortgaged property was conducted by the respondents-Bank on 18.11.2014 and after deposit of the entire sale amount, the respondents-Bank has issued sale certificate dated 1.12.2014 to the auction purchaser. It is also stated that on the stock and furniture, which are inside the premises, there is a charge on such stock-in trade.

4. Having heard learned counsel for the parties, we have perused the material available on record.

5. It is clear from the material available on record that as on the date of conducting auction on 18.11.2014 pursuant to the auction notice dated 15.10.2014, there was no interim order passed by the Tribunal. Therefore, the respondents-Bank has proceeded with the auction and the auction

purchaser has deposited the entire sale amount. In any event, the auction purchaser is not before us. Therefore, it is not possible to go into the validity of the auction conducted on 18.11.2014.

6. Although it is contended by the learned counsel for petitioners that there are several illegalities in conducting auction, the same is a matter to be considered by the Debts Recovery Tribunal, Visakhapatnam, where S.A.No.282 of 2014 is pending. If there is a subsequent auction conducted pursuant to the e-auction notice, it is open to the petitioners to take steps for amendment of the prayer in S.A.No.282 of 2014, but in the absence of impleadment of the third party-auction purchaser as a party respondent in this writ petition and further in view of the stand taken by the respondents-Bank in the counter affidavit that the auction purchaser has already deposited the entire bid amount and that on the stock-in-trade of the petitioners also, there is a charge, we do not find any merit to grant the relief sought for in this writ petition.

7. As it is stated that S.A.No.282 of 2014 filed by the petitioners is pending, we deem it appropriate to direct the Debts Recovery Tribunal, Visakhapatnam, to dispose of the same as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. It is made clear that if the petitioners choose to question the subsequent events by impleading the auction purchaser as a party-respondent, it is open to them to move an application before the Debts Recovery Tribunal, Visakhapatnam, seeking appropriate orders.

8. Subject to the above directions, this writ petition is

disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

22.06.2015.

Msr

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