

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

WRIT PETITION No.35697 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to set aside the order of Advocate-Commissioner Warrant dated 21.09.2015 in CrI.M.P.No.2513 of 2015, which is returnable by 27.11.2015, passed by the Chief Metropolitan Magistrate, Nampally, Hyderabad, with a further direction to the Debts Recovery Tribunal, Hyderabad, to pass orders on merits in I.A.No.3258 of 2015 in S.A.No.462 of 2014.

2. The petitioner Firm has availed over draft facility from the 1st respondent-Bank by mortgaging immovable property as security. When the petitioner Firm defaulted in repayment of the loan amount, the 1st respondent-Bank has initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the SARFAESI Act') to sell the secured asset. Challenging the same, the petitioner Firm has filed S.A.No.462 of 2014 before the Debts Recovery Tribunal, Hyderabad. After hearing the matter, the Tribunal has passed order dated 07.07.2014 directing the 1st respondent-Bank to defer e-Auction sale to be held on 08.07.2014 until further orders, on condition of the petitioner depositing a sum of Rs.25,00,000/- with the 1st respondent-Bank within eight weeks, out of which, a sum of Rs.5,00,000/- was directed to be deposited before the date of auction i.e., 08.07.2014, a sum of Rs.10,00,000/- was directed to be deposited within four weeks from the date of the said

order and balance sum of Rs.10,00,000/- was directed to be deposited within four weeks thereafter.

3. Learned counsel for the petitioner submits that though the petitioner has deposited the 1st and 2nd instalments of Rs.5,00,000/- and Rs.10,00,000/-, respectively, within the stipulated time, there is a delay of 28 days in depositing the 3rd instalment of Rs.10,00,000/-. In view of non-compliance of the order dated 07.07.2014 within time, on an application filed by the 1st respondent-Bank in Crl.M.P.No.2513 of 2015 under Section 14 of the SARFAESI Act, the Chief Metropolitan Magistrate, Hyderabad, has passed order/Advocate-Commissioner Warrant dated 21.09.2015 for taking physical possession of the secured asset and to handover the same to the 1st respondent-Bank. Challenging the said order, the present writ petition is filed.

4. Sri D. Raghavulu, learned counsel for the petitioner submits that due to the financial stringencies, the petitioner could not deposit the 3rd instalment of Rs.10,00,000/- within the stipulated time and as there is a delay of 28 days in depositing the said amount, the petitioner has filed an application being I.A.No.3258 of 2015 seeking to condone the said delay and the same is pending before the Tribunal.

5. On the other hand, M.V. Kini & Co., learned Standing Counsel for the 1st respondent-Bank, submits that after giving credit of the amount deposited by the petitioner, the petitioner is still due to the 1st respondent-Bank an amount of Rs.1,09,12,900/- inclusive of interest as on 17.11.2015. The learned Standing Counsel would further submit that inspite of obtaining interim order dated 07.07.2014, the petitioner has not complied with the said order and approached this Court by way of filing the present writ petition.

6. Heard learned counsel for the parties and perused the material on record.

7. It is to be noticed that S.A.No.462 of 2014 filed by the

petitioner is pending before the Tribunal and pursuant to the interim order dated 07.07.2014, no further e-Auction sale notice was issued to sell the secured asset of the petitioner. It is true that the petitioner has not complied with the said conditional order dated 07.07.2014 by depositing the 3rd instalment of Rs.10,00,000/- within the stipulated time and there is a delay of 28 days in depositing the said amount.

8. Taking into consideration the deposit of the 3rd instalment with delay and in view of the submission made by the learned Standing Counsel for the 1st respondent-Bank that a further sum of Rs.1,09,12,900/- inclusive of interest is payable by the petitioner, we deem it appropriate to dispose of the writ petition directing the 1st respondent-Bank to defer all further proceedings initiated under the SARFAESI Act, on condition of the petitioner depositing a further sum of Rs.15,00,000/- (Rupees fifteen lakhs only) within a period of four weeks from today. If the said amount is deposited within stipulated time, no further steps shall be taken by the 1st respondent-Bank to sell the secured asset. It is made clear that if the said amount is not deposited within the stipulated time, it is open to the 1st respondent-Bank to take steps to sell the secured asset of the petitioner without reference to the pendency of proceedings before the Tribunal. It is also directed that the Debts Recovery Tribunal, Hyderabad, shall dispose of S.A.No.462 of 2014 as expeditiously as possible, preferably within a period of two months from today.

9. Subject to the above directions, this writ petition is disposed of, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

18.11.2015.

NOTE: Issue C.C. in three days.

(B/O)

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.35697 of 2015

18.11.2015

Msr