HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.NO.8116 OF 2015

ORDER: **(Per Hon'ble Sri Justice M.Satyanarayana Murthy)**

The writ petitioner, who is the Bank, aggrieved by the order dated 19.12.2014 passed by the Debts Recovery Tribunal, Visakhapatnam (for short 'the Tribunal'), filed the present Writ Petition.

2. Respondents 2 to 6, who are the petitioners in S.A.No.247 of 2014, filed I.A.No.678 of 2014 for grant of interim stay during pendency of S.A., initially, the Tribunal was not inclined to grant interim stay, adjourned the matter twice and finally on 19.12.2014 passed an order directing the writ petitioner (OP Bank) to maintain *status* quo as on date till filing of its counter and reply.

3. The contention of the petitioner bank is that respondents 2 to 6 borrowed the amount and created security interest in immoveable property, but failed to pay the same. Thereupon, the petitioner bank invoked provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and declared the secured assets as non-performing asset, issued demand notice under Section 13(2) of SARFAESI Act on 28.07.2012 demanding respondents 2 to 6 for payment of 12,05,40,786/- together with subsequent interest at contractual rate. As respondents 2 to 6 did not discharge the debt due to the petitioner bank, it issued notice under Section 13(4) of SARFAESI Act on 16.10.2012 and took symbolic possession.

Challenging the said notice, respondents 2 to 6 filed S.A.No.470 of 2012 before the Debts Recovery Tribunal, Hyderabad challenging the measures taken by the authorized officer of the petitioner bank. The petitioner bank also issued another notice under Section 13(4) of SARFAESI Act on 09.11.2012 withdrawing the earlier notice dated 16.10.2012. Thereupon, the Tribunal dismissed S.A.No.470 of 2012 in view of withdrawal of notice dated 16.10.2012. Thereupon, the petitioner bank issued possession notice afresh on 20.03.2014 under Section 13(4), and notice under Rule 8(6) of the Rules framed under the Act on 07.07.2014 and also issued notice under Rule 9(1) of the Rules proposing to conduct auction of the secured asset on 13.08.2014 by "online E-auction".

4. In pursuance of the auction notice, the petitioner bank held the auction on 13.08.2014 and the same was confirmed in favour of the highest bidder and issued sale certificate on 21.08.2014. Thereupon, the petitioner bank addressed a letter dated 25.08.2014 requesting the 2nd respondent to remove the plant and machinery from the premises which was taken on lease from Delta Galil Textiles (India) Pvt. Limited within 7 days from the date of the said letter/notice. Instead of removing the plant and machinery, respondent No.2 issued a reply on 01.09.2014 informing that they filed W.P.No.23085 of 2014 on 11.08.2014 challenging the online E-auction and requested the writ petitioner bank not to initiate any action in view of the pendency of the writ petition. The said writ petition was contested by the petitioner bank being the respondent in the said writ petition and the same was dismissed as infructuous, as the sale was confirmed and sale certificate was issued on 21.08.2014. Subsequently, respondent No.2 filed S.A.No.247 of 2014 on 24.09.2014 before the Debts Recovery

Tribunal, Visakhapatnam challenging the auction of secured asset held on 13.08.2014. The writ petitioner bank informed about the stage of auction, but the Tribunal granted *status quo* order in I.A.No.678 of 2014 on 19.12.2014 till filing of counter and reply by the bank and posted the matter to 11.02.2015, which is under challenge.

5. In view of the order under challenge, the writ petitioner bank filed counter in I.A.No.678 of 2014 on 12.01.2015 and reply in S.A.No.247 of 2014 along with counter vide IR No.65 of 2015. In the meantime, the Presiding Officer of DRT retired on 31.12.2014 and the office of Chairman, DRT became vacant. Therefore, S.A. and IA are pending before DRT and were adjourned from time to time by the Registrar of DRT. The writ petitioner bank also filed I.A.No.17 of 2015 to advance I.A.No.678 of 2014, but the same was dismissed due to absence of the counsel for the writ petitioner bank, as the Chairman, DRT, Hyderabad is not willing to take up the matters, who is likely to retire from service within a short period. It is further contended that on account of *status quo* orders passed by the DRT, Visakhapatnam till filing of counter and reply by respondents 2 to 6, respondents 2 to 6 did not file the same and that the sale could not be completed by executing a registered sale, conveying the property to the highest bidder of the secured asset, in the auction held on 13.08.2014. The order passed by the Tribunal directing to maintain *status quo* till filing of its counter and reply, is nothing but permitting respondents 2 to 6 to protract the proceedings *ad infinitum,* as they did not file reply to the counter. Hence, the writ petitioner bank having no other alternative except to approach this Court filed the petition to quash the impugned order passed by the Tribunal.

6. With the consent of both counsel i.e. Smt T.Vidya Rani, learned

counsel for petitioner and Sri N.Ravi Prasad, learned counsel for respondents 2 to 6, the matter was heard at length at the stage of admission.

7. The main grievance of the counsel for the writ petitioner is that on account of *status quo* order dated 19.12.2014 passed by the Tribunal, Visakhapatnam, the sale could not be completed and huge amount of Rs.382 lakhs paid by the highest bidder was held up with the writ petitioner bank and could not be appropriated the same towards debt and even the auction purchaser was incurring substantial loss on account of non-execution of the registered sale deed, in terms of the provisions of SARFAESI Act and that apart, no Chairman of the DRT was posted since 1st February, 2015 and even the in-charge Chairman of DRT at Hyderabad is going to retire by end of this month and when no Chairman is posted in the Tribunals, it is difficult for the writ petitioner to appropriate the amount and that the writ petitioner bank and the auction purchaser will be put to much inconvenience on account of the prevailing situation. Therefore, the writ petitioner bank prayed to allow the writ petition by setting aside the impugned order passed by the Tribunal on 19.12.2014.

8. Per contra, learned counsel for respondents 2 to 6 would contend that the notice issued under Rules 8(6) and 9(1) of the Act are not in strict compliance of procedure prescribed under the rules and as there was no gap of 30 days between Rule 8(6) notice and Rule 9(1) notice, on account of violation of Rule 8(6) and Rule 9(1) of SARFAESI Act, the sale could not be confirmed.

9. Yet, learned counsel for respondents 2 to 6 raised a contention that when earlier possession, notice under Section 13(4) of

SARFAESI Act was withdrawn and the writ petitioner bank has to start the proceedings afresh from the stage of Rule 13(2) notice, but instead of starting fresh proceedings issued another notice under Rule 13(4) of the Act and held online E-auction, which is contrary to the provisions of SARFAESI Act. Therefore, the sale itself is illegal and vitiated by irregularities and consequently the *status quo* order dated 19.12.2014 cannot be vacated and prayed to dismiss the writ petition.

10. Considering the rival contentions and perusing the material available on record, including the order dated 19.12.2014 passed by the 1st respondent , the point that arises for consideration is:

> ***Whether the order dated 19.12.2014 directing the writ petitioner (OP bank) to maintain status quo as on date till filing of its counter and reply in I.A.No.678 of 2014 in S.A.No.247 of 2014 is legally valid and in accordance with law, if not, the order under challenge be sustained?***

POINT:

11. As seen from the impugned order passed by the 1st respondent dated 19.12.2014, the petitioner was directed to maintain *status quo* as on date till filing of its counter and reply. A counter is required to be filed in I.A.No.678 of 2014 and a reply is required to be filed in S.A.No.247 of 2014. As per the allegations made in the verified affidavit filed by the petitioner, the writ petitioner filed counter in I.A.No.678 of 2014 on 12.01.2015 and reply counter in S.A.No.247 of 2014 along with counter i.e IR No.65 of 2015. Therefore, it is clear from the order that the writ petitioner has complied its obligation to file counter in I.A.No.678 of 2014 and reply counter in S.A.No.247 of 2014 on 12.01.2015. The order is clear that the counter and reply are

required to be filed by the writ petitioner alone. That means filing of counter in I.A and reply in S.A and the order passed by the Tribunal never intended to direct the writ petitioner to maintain *status quo* till filing of reply by respondents 2 to 6 herein or the 2nd respondent before the 1st respondent in S.A.No.247 of 2014. Even otherwise, the language used in the order "till filing of its counter" and reply by the OP bank is clear that the writ petitioner was called upon to file counter in I.A and reply in S.A, which are complied with by the petitioner. On the date of filing of counter in I.A. and reply in S.A. i.e. on 12.01.2015 the *status quo* order is ceased to exist. Therefore, no order is required to be passed by this Court to quash the same.

12. One of the major contentions of the writ petitioner is that the 2nd respondent having lost the remedy in W.P.No.23085 of 2014, he is not entitled to file S.A. under Section 17(1) of SARFAESI Act and the order passed by this Court in the writ petition referred above disabled him to file the present S.A before the 1st respondent.

13. Undoubtedly, the writ petition was dismissed as infructuous since respondents 2 to 6 filed W.P.No.23085 of 2014 challenging the online E-auction of the secured asset dated 13.08.2014 and declaring the sale by online E-auction as illegal, void and contrary to Sub-rule 5 of Rule 8 of SARFAESI Act. The contention of the writ petitioner lacks merits for the reason that W.P.No.23085 of 2014 was filed challenging the possession notice issued under Section 13(4) of SARFAESI Act and the same was dismissed as infructuous due to sale of the property and its confirmation by the writ petitioner in favour of the highest bidder and issued sale certificate dated 21.08.2014 in S.A. before the 1st respondent. The very auction of the property was challenged.

Therefore, the relevant claim in the writ petition and in S.A. is different and distinct. Hence, the contention of the writ petitioner cannot be accepted.

14. The main endeavour of the counsel for the writ petitioner is that on account of the *status quo* order passed by the Tribunal, the writ petitioner bank is unable to complete the sale by executing sale deed. No doubt, the auction purchaser having invested huge amount will insist for completion of transaction in normal course of events and the writ petitioner bank is under obligation to complete the sale strictly adhering to the provisions contained in SARFAESI Act. But on account of *status quo* dated 19.12.2014, the writ petitioner bank could not complete the sale transaction. But the interim order of *status quo* dated 19.12.2014 is only limited and is deemed to be in operation till filing of counter in I.A.No.678 of 2014 and reply in S.A.No.247 of 2014. Thereafter, the *status quo* order is deemed to have been ceased. Therefore, nothing prevented the writ petitioner bank to proceed further to complete the sale transaction in accordance with law.

15. Learned counsel for respondents 2 to 6 would contend that the notice under Rules 8(6) and 9(1) of SARFAESI Act are not in accordance with law, as there was no intervening period of 60 days between Rule 8(6) notice and auction. According to Rule 8(6) of the Act, 30 days notice prior to sale is required to be issued and at the same time, Rule 9(1) of SARFAESI Act obligates the writ petitioner bank to publish the sale notice in two news papers, one in the regional language and another is in English. In the present case, respondents 2 to 6 admittedly received notice dated 07.07.2014 issued under Rules 8 and 9 of the Act. However, before this Court, learned counsel for respondents 2 to 6 denied the very receipt of notice dated 07.07.2014,

but this contention would not stand to any legal scrutiny in view of the admission of respondents 2 to 6 in W.P.No.23085 of 2014. In para 15 of the said writ affidavit, the petitioners therein and respondents 2 to 4 herein admitted receipt of notice dated 07.07.2014 under Rules 8(6) and 9(1) of the Rules framed under the Act. In other words, respondents 2 to 6 admitted about the receipt of notice under Rules 8(6) and 9(1) of SARFAESI Act. Before the Tribunal, the respondents 2 to 6 raised several contentions including the validity of notice under Rules 8(6) and 9(1) of SARFAESI Act and online E-auction, as the auction is not the public auction or public tender prescribed under Sub Rule (8) of Rule 8. But this Contention needs no consideration while deciding the order under challenge passed in I.A.No.678 of 2014 in S.A.No.247 of 2014.

16. Even otherwise, the contention of the learned counsel for the petitioner is wholly untenable in view of the law laid down by the Apex Court in **Mathew Varghese v. M.Amritha Kumar and others**[1] while considering the requirement under Rules 8(6) and 9(1) of the Rules framed under the Act, the Apex Court in para 28 held as follows:

> *"Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said rules prescribe as to the procedure to be followed by a Secured Creditor while resorting to a sale after the issuance of the proceedings under Section 3(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to Sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorized officer should serve to the borrower a notice of 30 days for the sale of the immovable Secured Asset. Reading Sub-rule (6) of Rule 8 and Sub-rule (1) of Rule 9 together, the service of*

individual notice to the borrower, specifying clear 30 days time gap for effecting any sale of immovable Secured Asset is a statutory mandate. It is also stipulated that no sale should be effected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear 30 days individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in news paper should provide for 30 days clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with proviso to Sub-rule (6) of Rule 8, 30 days clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression 'or' in Rule 9(1) should be read as 'and' as that lone would be in consonance with Seton 13(8) of the SARFAESI Act."

17. If the ratio laid down in the above judgment of the Apex Court is applied to the present facts of the case, the writ petitioner strictly complied with the procedure contemplated under Rules 8(6) and 9(1) of the Rules framed under the Act. The sale notice was published on 07.07.2014. Proposed auction was to be held online E-auction on 13.08.2014. Thus, there is a clear 30 days notice as required under Rule 9(1) read with Rule 8(6) it is complied with. That apart, a notice under Rule 8(6) was issued on 07.07.2014 which was admittedly received by respondents 2 to 6, as per the writ affidavit filed in the earlier W.P.No.23085 of 2014 at para 15. Thus, the writ petitioner strictly adhered to the procedure prescribed under Rules 8(6) and 9(1) of the Rules framed under the Act and on this ground, the *status quo* order passed by the 1st respondent cannot be continued to disable the bank to complete the sale by executing registered sale deed in pursuance of the sale certificate already issued on 21.08.2014.

18. Taking into consideration of the facts and circumstances of the case and prima facie compliance of Rules 8(6) and 9(1) of the Rules

framed under the Act and interpreting the order under challenge passed by the 1st respondent, we find that the interim order of *status quo* granted by the 1st respondent is only limited till filing of the counter in I.A.No.678 of 2014 and reply in S.A.No.247 of 2014 by the writ petitioner (OP bank) and not intended to operate till filing of reply by the respondents to the counter in I.A.No.678 of 2014 in S.A.No.247 of 2014. Even if the intention of the 1st respondent is to maintain *status quo* till filing of reply by the respondents against the counter filed by the writ petitioner in I.A.No.678 of 2014 in S.A.No.247 of 2014, it amounts to granting an order directing the writ petitioner to maintain *status quo ad infinitum* since respondents 2 to 6 herein may not come forward to file reply to the counter in S.A.No.247 of 2014. Such order is illegal and this Court while exercising discretionary jurisdiction under Article 226 of the Constitution of India corrects such orders passed by the Tribunal exercising supervisory jurisdiction over the Tribunal. Therefore, the order under challenge directing the writ petitioner to maintain *status quo* till filing of its counter and reply is hereby quashed, as the order under challenge is unsustainable under law.

19. In the result, the writ petition is allowed at the stage of admission setting aside the order dated 19.12.2014 passed in I.A.No.678 of 2014 in S.A.No.247 of 2014 by the 1st respondent. There shall be no order as to costs.

20. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

RAMESH RANGANATHAN,J

M.SATYANARAYANA MURTHY,J

Date: 01.05.2015

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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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W.P.NO.8116 OF 2015

(Per Hon'ble Sri Justice M.Satyanarayana Murthy)

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DATE: 01.05.2015

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[1] III(2014) BC 657 (SC)