IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH

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WRIT PETITION No.3035 OF 2016

Between:

M/s Sri Vijaya Lakshmi Agencies
Rep. by its proprietor, Sri N.Ajay Babu

… Appellants.

And

Authorised Officer, Canara Bank,
Darbar Road, Chirala Town and Mandal,
Prakasam District and another.

… Respondents.

JUDGMENT PRONOUNCED ON 17.02.2016

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? — Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals — Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? — Yes

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· THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND

- **THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO**

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+ WRIT PETITION NO.3035 of 2016

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% 17.02.2016

M/S Sri Vijaya Lakshmi Agencies,
Rep. by its Proprietor, Sri N.Ajay Babu

….Petitioner

v.

$ Authorised Officer, Canara Bank,
Darbar Road, Chirala Town and Mandal,
Prakasam District and another.

…. Respondents

! Counsel for the Petitioner: Sri Naga Praveen Vankayalapti

Counsel for Respondents: Smt.S.Siva Kumari, Standing Counsel

For the Bank

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION NO.3035 OF 2016

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted seeking a writ of Mandamus for declaring the action of the respondent – bank in issuing E-Auction sale notice on 25.01.2016, without issuing any notice as contemplated in sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as bad in law.

The writ petitioner seems to have availed financial assistance from the 2nd respondent – bank on 27.05.2013. On 19.09.2014 the 2nd respondent – bank got served notice under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the petitioner to liquidate the entire outstanding amount due in Rs.88,87,157/- within 60 days time, as the loan account has been classified as "non performing asset" on 30.08.2014. It is the specific case of the petitioner that a residential property given as a security for the loan has been sold by way of auction and realised Rs.36,00,000/-. Thereafter, the impugned notice has been got published in the leading newspapers on 25.01.2016 proposing to sell a residential property situated at Survey No.443 bearing Door No.2-9 (1) Parchur village and Mandal and another residential property situated at Survey No.454/2 bearing Door No.5-54 of Parchur Village and Mandal. Hence, this writ petition is instituted.

Sri Naga Praveen Vankayalapati, learned counsel for the petitioner, would contend that prior to publishing E-Auction sale notice dated 25.01.2016, the 2nd respondent – bank has not put the petitioner on notice once again stipulated in sub-section (2) or sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Hence, the 2nd respondent – bank shall be restrained from proceeding any further in the matter.

The Parliament with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for other matters connected therewith, enacted the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act'). Therefore, this is a special piece of legislation, where a special procedure has been contemplated and provided for in Section 13 of the Act, particularly, for recovering the outstanding liabilities from the debtors to the secured creditors. Therefore, when once a loan account is declared as "nonperforming asset", it is liable to be subjected to measures of securitisation. Hence, one notice is liable to be drawn under sub-section (2) of Section 13 of the Act providing a minimum of 60 days time to the borrower to liquidate the liability. Once he fails to liquidate such liability within the time so stipulated, then under sub-section (4), a special procedure has been contemplated enabling the secured creditor to take possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for purpose of realising the debt due.

Therefore, when once the petitioner admits to have received notice under sub-section (2) of Section 13 of the Act on 19.09.2014, but the liability is not liquidated, the subsequent follow-up action, particularly, contained in sub-section (4) of Section 13 of the Act will automatically flow therefrom. We are, therefore, of the opinion that under sub-section (2) of

Section 13 of the Act, only one notice is contemplated to be given to the defaulting borrower providing him a minimum of 60 days time to liquidate the outstanding liability. Only in the event of failure to liquidate the liability, the follow-up action can be initiated. But, every time the action contemplated by sub-section 4 of Section 13 of the Act is undertaken, a notice under sub-section 2 of Section 13 of the Act need be issued. Further as a prudent measure, the creditor may not liquidate all the secured assets at one time, but may prefer go for sale of the assets one after the other and hope that the sale proceeds would be sufficient enough to liquidate the entire debt.

In the instant case, as a part of the follow-up action, one of the secured assets was also put to auction and the sale proceeds are also applied to liquidate the liability to the extent of the money so realised. Since the outstanding liability has not been completely liquidated and exhausted, the other secured assets are now sought to be put to sale. Therefore, the proposed sale by E-Auction by the respondent – bank cannot be declared as illegal or unjust. On the other hand, in the absence of any specific material to arrive at a safe conclusion that the proposed sale of the asset is not the one over which the security interest has been created in favour of the 2nd respondent -bank by the petitioner - borrower, we cannot interdict the proposed sale by E-Auction of the said property at the behest of the petitioner – borrower. We are, therefore, of the opinion that the prayer as sought for in the writ petition is not liable to be granted.

But nonetheless, learned counsel for the petitioner urges this Court to grant time up to 30.03.2016 for firstly, to approach the respondent – bank with a request to reconcile the accounting errors noticed by him, and secondly, to liquidate the entire liability to the satisfaction of the respondent – bank. While we consider that the ends of justice would be better served by granting time till 30.03.2016 to the petitioner for submitting a detailed representation requiring attention to be paid by the respondent – bank for reconciliation of the account, but at the same time the petitioner shall also liquidate the outstanding liability, by that date.

But however, the respondent – bank shall not be prevented from proceeding with the proposed auction because any such measure to stop them from doing so would work to their disadvantage but would also be putting the clock back. Hence, we leave liberty to the respondent – bank to proceed further with the proposed auction of the asset on 29.02.2016. But however, the respondent – bank may not confirm the sale in favour of the best bidder(s) till 31.03.2016. Only in the event of the petitioner failing to liquidate the entire liability, the respondent – bank can confirm the sale in favour of the best bidder(s) on or after 01.04.2016.

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

17.02.2016

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