THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION Nos.16898 and 17408 of 2016

31.08.2016

W.P.No.16898 of 2016:

Between:

Tubati Veeraiah

..Petitioner

And

Ganga Ravi Kumar and others

..Respondents

Counsel for the petitioner: Mr.K.Ananda Rao

Counsel for respondent No.1: Mr.Ghanta Rama Rao for Mr Ghanta Sridhar

Counsel for respondent No.2: Mrs.V.Dyumani

Counsel for respondent No.3: --

W.P.No.17408 of 2016:

Between:

Andhra Bank, Guntur

..Petitioner

And

The Debts Recovery Tribunal, Visakhapatnam and others

..Respondents

Counsel for the petitioner: Mrs.V.Dyumani

Counsel for respondent No.2: Mr.Ghanta Rama Rao for Mr. Ghanta Sridhar

Counsel for respondent No.3: Mr.K.Ananda Rao

Counsel for respondent No.1: --

The Court made the following:

COMMON ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The creditor filed W.P.No.17048 of 2016 for a *certiorari* to quash the order, dated 12.05.2016, in Securitization Appeal No.93 of 2016, passed by the Debts Recovery Tribunal, Visakhapatnam – respondent No.1. The auction purchaser in the auction held by the creditor – the petitioner in W.P.No.17408 of 2016, filed W.P.No.16898 of 2016 questioning the self same order.

2. For convenience, the parties are referred to as they are arrayed in W.P.No.17408 of 2016.

3. The brief facts leading to the filing of these writ petitions are that questioning the sale notice, dated 23.02.2016, issued by the petitioner, respondent No.2 filed Securitization Appeal No.93 of 2016 before respondent No.1 Tribunal. No interim order was passed therein. However, in pursuance of the notice issued by respondent No.1 Tribunal, the petitioner appeared before it and brought it to its notice by way of a reply that in pursuance of the auction notification, auction was held and the same was confirmed in favour of respondent No.3 by issuance of the sale certificate. Despite the said fact, respondent No.2 has not impleaded respondent No.3 in the Securitization Appeal.

4. Before respondent No.1 Tribunal, respondent No.2 pleaded that the petitioner sold the property at a price, which is far less than the market value i.e., as against the market value of Rs.70 lakhs, the property was sold for Rs.35 lakhs; that one of the bidders in the sale is the son of the Assistant Manager (working in the same branch) of the petitioner bank, which has brought the property for sale and that respondent No.2 is ready

and willing to pay the bid amount and redeem the property. The petitioner strongly opposed the contentions advanced on behalf of respondent No.2 and pleaded that the sale was held with the knowledge of respondent No.2; that respondent No.2 failed to enclose with the appeal, any independent valuation report; that the value claimed by the said respondent was not correct; that the fact that the son of the Assistant Manager is not the successful bidder renders the fact against his participation in the auction irrelevant and that the sale certificate was already issued and possession was also delivered to respondent No.3.

5. Having noted the aforementioned submissions advanced on behalf of respondent No.2, respondent No.1 Tribunal, in the impugned order, did not deal with any of the said objections of the petitioner. It has allowed the Securitization Appeal only by taking into consideration the readiness and willingness of respondent No.2 to pay the highest bid amount of Rs.35 lakhs and also interest payable at fixed deposit (FD) rate to the auction purchaser.

6. In our opinion, respondent No.1 Tribunal has committed a serious illegality in allowing the Securitization Appeal for reasons more than one. When the petitioner informed respondent No.1 Tribunal that the auction was confirmed, the sale certificate was issued and delivery of physical possession was also made in favour of respondent No.3, respondent No.1 Tribunal ought not to have allowed the Securitization Appeal without respondent No.2 impleading respondent No.3 and amending the Securitization Appeal by seeking the relief of setting aside the sale and its confirmation. Moreover, once the sale is confirmed, the sale certificate is issued and the property is delivered, respondent No.1 Tribunal has no

jurisdiction to set aside the same, unless it is satisfied that holding of the sale suffers from serious illegalities or procedural irregularities. Respondent No.1 Tribunal has not rendered any finding whatsoever in this regard. For these reasons, we hold that the order of respondent No.1 Tribunal in allowing the Securitization Appeal cannot be sustained in law.

7. The impugned order, dated 12.05.2016, in Securitization Appeal No.93 of 2016 of respondent No.1 Tribunal is, accordingly, set aside. The matter is remanded to respondent No.1 Tribunal. Respondent No.2 shall implead respondent No.3 to the Securitization Appeal within a period of four weeks from today. On such impleadment, respondent No.1 Tribunal shall hear the Securitization Appeal afresh and pass a fresh order, on merits.

8. Both the Writ Petitions are allowed to the extent indicated above.

9. As a sequel to allowing these Writ Petitions, miscellaneous petitions pending therein shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

31st August, 2016
GHN