HON'BLE SRI JUSTICE R.KANTHA RAO
and
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P.No.41151 of 2015

ORDER: (*Per Hon'ble Dr. Justice B.Siva Sankara Rao*)

The writ petitioner is the borrower, as defined under Section 2(1)(f) of the SARFAESI Act, 2002 (for short 'the Act'), having availed financial assistance from the respondent bank, as defined under Section 2(c) of the Act, and for the default committed, the loan account was classified as non-performing asset, as per section 2(o) of the Act and the bank initiated securitization measures and after issuance of notice under Section 13(2) of the Act with 60 days time to liquidate for non-liquidation of the secured debt, the bank issued notice of taking possession of the secured asset under Section 13(4) of the Act, as part of the security measures, for recovery of the debt.

Impugning the said possession notice under section 13 (4) issued by the secured creditor, the petitioner approached Debts Recovery Tribunal (DRT), Hyderabad and filed SA No.190 of 2015 and there was an interim order passed by the DRT, Hyderabad on 19.3.2015 directing the petitioner to pay Rs.2.50 lakhs and out of it Rs.50,000/- to be deposited on or before the date and time of auction and further sum of Rs.1,00,000/- within three weeks from the date of order and again Rs.1.00 lakh within three weeks thereafter. But the petitioner paid only Rs.50,000/- on 20.3.2015 and later failed to pay balance to comply with the said order. It is the claim of the petitioner that due to financial problems after sudden demise of his wife-M.R.Jayasree on 27.5.2014, (which is almost 10 months before the payment schedule) he could not adhere to the payments stipulated.

Later e-auction notice was issued by the bank on 5.11.2015 having complied with the requirements as per Rule 8 (6) read with 9 (1) of the Securitization Rules, 2002, fixing the date of auction as 17.12.2015. At this stage, the petitioner approached this Court, by the present writ petition and there was an interim direction granted by order dated 17.12.2015 subject to condition of the petitioner depositing of Rs.1,00,000/- within a period of two months from that date. It is the submission of the learned counsel for the petitioner that the said order has been complied with. Thus, a total amount of Rs.1,50,000/- was paid pursuant to the order in the writ petition supra dated 17.12.2015 for the fresh auction notice though there was no total compliance with the order in SA No.190 of 2015, Rs.2,50,000/- to be deposited, for what all he deposited is only Rs.1,50,000/-.

Learned Counsel for the bank opposed writ petition stating that because of the interim order, the sale could not be confirmed and as on date there is an amount of Rs.12.50 lakhs is due after adjustment of Rs.1,50,000/- paid besides securitization expenses and subsequent interest and incidental charges.

Having regard to the above, to sub-serve the ends of justice, the writ petition is disposed of as follows:

The interim order of this court dated 17.12.2015 to pay Rs.1.00,000/- is modified to pay at least Rs.4,00,000/- on or before 31st May, 2016 to stay the further proceedings of sale confirmation or fresh sale. If the petitioner failed to so comply, without further reference to the court and by virtue of this order, the bank can proceed with to confirm the sale and if the highest bidder withdrawn from the bid, to conduct fresh auction sale and issue sale certificate, which is subject to result of the SA No.190 of 2015. The Chairman of the DRT, Hyderabad, is directed to dispose of the SA No.190 of 2015 within two months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE R.KANTHA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

26th April, 2016
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