THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

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

WRIT PETITION No.4467 of 2016

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

Heard Ms.R.Sushma, learned counsel representing Sri C.V.L.N.Murthy learned counsel for the petitioner, for considerable length of time and Sri Mallikharjuna Rao learned counsel who accepted the notice on behalf of respondent Nos.1 and 2-Bank. In view of the order proposed to be passed by this Court, it is not necessary to put the other respondents viz., 3 to 6 on notice.

2) The petitioner herein is incidentally the wife of the 6th respondent. She has claimed right, title, ownership and interest in the land of an extent of Ac.1-09 cents situated in Survey No.16/1, Vundavalli village, Tadepalli Mandal, Mangalagiri Sub-division, Guntur District. It appears that the 3rd respondent-company has availed certain financial assistance from the 1st respondent bank. But, however, the said loan remained unpaid. Consequently, the said loan has been declared as non-performing asset by the respondent-bank. For the purpose of undertaking securitisation measures, the respondent-bank has issued a demand notice under Sub-section (2) Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act') demanding entire liability to be liquidated. Since said demand notice remained unfulfilled and non responsive, the present auction notice has emanated from the Bank, as such a measure has been contemplated under Sub-section (4) of Section 13 of the Act. It is this notice which is challenged in this writ petition.

3) With a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters

connected therewith, the Parliament has enacted the Act. Various expressions found mentioned in the enactment are defined under Section 2(1) of the Act. The expression 'Bank' has been defined under Section 2(1)(c) of the Act in the following terms:

> *"Bank" means--*
> *(i) a banking company; or*
> *(ii) a corresponding new bank; or*
> *(iii) the State Bank of India; or*
> *(iv) a subsidiary bank; or*
> *(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"*

4) Consequently, respondent Nos.1 and 2 herein squarely answered the said expression. Similarly the expression 'Borrower' has been assigned a very exhaustive definition under Section 2(1)(f) of the Act which runs as under:

> *"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;"*

5) From a careful analysis of the expression 'Borrower' as defined, even a person who has held out any guarantee or created any mortgage or pledge as a security for the financial assistance granted by any bank to another person becomes a borrower. There is no dispute on the factual count that the petitioner herein has tendered guarantee to the respondent-bank for the financial assistance availed by the 3rd respondent with them. Hence, the petitioner herein is liable to be treated as 'borrower' for the purpose of the Act. The expression 'Financial Asset' has been defined in Section 2(1)(l) as under:

> *"Financial Asset" means debt or receivables and includes--*
> *(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or*
> *(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or*
> *(iii) a mortgage, charge, hypothecation or pledge of movable property; or*
> *(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or*
> *(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or*
> *(vi) any financial assistance;*

6) From the above definition, which is very exhaustive, any mortgage, a charge, hypothecation or a pledge of movable property becomes financial asset. It is set out that the petitioner has held out land of an extent of Ac.1-09 cents and created a mortgage in respect thereof in favour of the respondent-bank.

7) Section 13 of the Act provided for measures to be adopted for enforcing the security interest. Under Section 13(2) of the Act whenever any borrower makes any default in repayment of the secured debt or instalment thereof, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days. Failing which, the secured creditor shall be entitled to exercise all or any of the rights created under sub-section (4) of Section 13 of the Act.

8) There is also no factual dispute on the count that the demand notice raised under sub-section (2) of Section 13 of the Act has remained non-responsive. Sub-section (4) of Section 13 of the Act *inter alia* provided for taking possession of any such asset and then also put it for sale for the purpose of realising the debt. It appears the asset in question has been taken possession and now through the

impugned notice, it is sought to be sold through e-auction method. It is scheduled to be held between 2.00 to 4.00 P.M on 12.02.2016. As of now, we are not in the know as to what transpired at the said auction. However, after hearing the learned counsel on other side, we are inclined to accept the suggestion made by Ms.Sushma that the petitioner may be granted some little time for the purpose of liquidating the entire liability. We also feel that ends of Justice would be better served if the property in question which is sought to be sold by e-auction conducted, either on 12.02.2016 or for any reasons on any other subsequent date, is not confirmed and sale certificate is not issued, no such steps of confirmation and/or issuance of sale certificate be undertaken till 30.03.2016 by which date, the petitioner, undertakes to liquidate, the entire liability and the incidental expenditure, the bank has incurred in realising and putting the said property for sale. Hence, time is granted up to 30.03.2016 for liquidating the entire liability. For any reason, the petitioner fails to keep up this promise, it shall be open to the respondent-bank to proceed further in the matter by confirming the sale by collecting the balance sale consideration of 75% and delivering the possession of the property to the highest purchaser and execute a regular deed of sale in his favour without any further reference to this Court.

9) The writ petition accordingly stands disposed of. No costs. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

23.02.2016
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