THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>WRIT PETITION No. 10021 of 2014</u>

<u>ORDER:</u> ***(Per VRS,J)***

The petitioner, who is the purchaser of a secured asset in an auction conducted by the 1st respondent-Bank under the SARFAESI Act, 2002, has come up with the present writ petition, challenging an order passed by the Debts Recovery Tribunal setting aside the auction sale and, thereafter, refusing to record a compromise.

2. Heard Mr. G. Rama Rao, learned senior counsel, appearing for the petitioner, and Mr. B.S. Prasad, learned standing counsel for State Bank of India, appearing for the 1st respondent.

3. The respondents 1 to 3 have already been served with notices. Notice to the 4th respondent could not be served. But, it does not matter, in view of the fact that the 4th respondent was already declared insolvent and he is represented by the Official Receiver, who is the 2nd respondent herein. Additionally, the order under challenge in the writ petition was passed by the Debts Recovery Tribunal at the behest of the 3rd respondent, to whom the 4th respondent allegedly owed money.

Therefore, in the present lis, which is actually between the petitioner and the 3rd respondent, the 4th respondent has no role to play.

4. The brief facts, out of which the above writ petition arises, are (1) that the 4th respondent borrowed money from the 1st respondent-Bank and committed default in payment of the same; (2) that the 1st respondent-Bank brought the secured asset to sale through auction, (3) that the petitioner herein became the highest bidder and the sale in his favour was confirmed; (4) that in the meantime, the 4th respondent was declared insolvent and the Official Receiver did not challenge the sale; (5) that however, the 3rd respondent filed S.A.No.104 of 2007 seeking to set aside the sale, on the short ground that he had lent money to the very same 4th respondent and he had obtained a registered mortgage deed subsequent to the mortgage created in favour of the 1st respondent-Bank; and (6) that, therefore, his interest should have been taken note of as a second mortgagee, when the property was sold.

5. Accepting the contention of the 3rd respondent herein, the Tribunal allowed his application, S.A.No.104 of 2007, without even ordering notice to the petitioner herein, who was the auction purchaser.

6. Therefore, the petitioner came up with a writ petition in W.P.No.19933 of 2009 on the file of this Court, challenging the order of the Tribunal. During the pendency of the writ petition, the petitioner arrived at a compromise with the 3rd respondent. Therefore, the said writ petition was closed, by an order, dated 13.04.2011, directing the petitioner to go back to the Tribunal and move an application for recording the compromise.

7. When the petitioner went before the Tribunal for recording the compromise, the Tribunal resisted the attempt, on the ground that it had already become *functus officio*. Therefore, that decision of the Tribunal had to be challenged in a fresh writ petition in W.P.No.28479 of 2011. That writ petition was dismissed with liberty to the petitioner to file a fresh writ petition to challenge the original order passed by the Tribunal setting aside the sale.

8. True to the proverb *'what does not begin well does not augur well'*, the petitioner, who participated in the auction in the year 2007, even after settlement of the dispute with the person who raised it, is driven from pillar to post even to record the compromise.

9. The fact of the matter is that the borrower has been adjudicated as insolvent. He has not raised any objection to the auction sale.

10. The 1st respondent-Bank has recovered its money through the auction sale and they do not have any objection to the issue of a sale certificate. The 3rd respondent, who raised objection to the auction sale, has taken his money and entered into a compromise.

11. In the light of the above, the Writ Petition is allowed, the order of the Debts Recovery Tribunal is set aside, the factum of compromise is recorded, and the 1st respondent-Bank is directed to issue a sale certificate and register it at the cost of the petitioner, within a period of four (4) weeks.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

15th December, 2016
cbs

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Writ Petition No. 10021 of 2014
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