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

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.40091, 41546, 40101, 40105, 41548 and 41551 of 2015

Date: 16.09.2016

WRIT PETITION No.40091 of 2015

Between:

Kotak Mahindra Bank Limited

.. Petitioner

and

Deccan Chronicle Holdings Limited,
Having its registered office at 36,
Sarojini Devi Road,
Secunderabad, and others.

.. Respondents

Counsel for the petitioner: Sri S. Niranjan Reddy

Counsel for respondent No.1: Sri C.V. Mohan Reddy, Senior Counsel
For Sri A. Chandrasekhar Reddy

Counsel for respondent No.5: Sri D. Prakash Reddy, Senior Counsel
For Sri T. Srikanth Reddy

Counsel for respondent No.6: Sri R.N. Hemendranath Reddy

Counsel for respondent No.7: Sri S. Ravi, Senior Counsel
For Sri Ch. Pushyam Kiran

The Court made the following:

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

These writ petitions pertain to common subject matter. The relevant facts necessary for disposal of this batch of writ petitions are that respondent No.1 i.e., the principal borrower was unsuccessful in challenging the securitisation measures initiated by the petitioner in W.P.No.40091 of 2015, which is the creditor, culminating in the sale of the security asset. The challenge was conclusively repelled by a Division Bench of this Court by common order dated 28.07.2015 in W.P.Nos.10602 and 17935 of 2015. Having unsuccessfully challenged the order of this Court before the Supreme Court in a Special Leave Petition, respondent No.1 has filed W.P.M.P.No.35914 of 2015 in W.P.No.10602 of 2015 and W.P.M.P.No.35915 of 2015 in W.P.No.17935 of 2015 seeking extension of time by three months for vacating subject premises, which as per the orders in the aforementioned two writ petitions ought to be vacated by 31.08.2015. In the said petitions, an affidavit of undertaking is filed before this Court by the Managing Director of respondent No.1, wherein he has stated that since heavy machinery was located in the premises for printing newspapers and that in order to make alternative arrangement for shifting the machinery without disrupting the printing of newspapers, a minimum of three weeks' is required. An unconditional undertaking was given to shift the machinery and vacate the premises without fail within three weeks i.e., by

21.09.2015 without necessitation or intervention of the police or any other action of law.

Having taken into consideration the said undertaking affidavit, this Court extended time till 21.09.2015 by making it clear that if respondent No.1 does not vacate the premises by the said date, it would be open to the petitioner to make a written request to the police officials in terms of the earlier order in W.P.Nos.10602 and 17935 of 2015. After the said order was passed, the respondents have approached the Debts Recovery Tribunal, Hyderabad Bench (for short 'the Tribunal') with the plea that the petitioner has failed to follow the required procedure for sale of the property and that they were able to secure a buyer, who was willing to offer Rs.25,00,00,000/- as against highest bid of Rs.22,10,00,000/-. The applications filed by the respondents were registered as S.A.Nos.340 and 384 of 2013. In the said appeals, the respondents have filed applications for interim order, on which, the Tribunal has passed an order of *status quo* on 06.10.2015, which was extended on 23.11.2015. Assailing the interim order granted by the Tribunal, the secured creditors and the auction purchaser have filed these writ petitions.

By a detailed order dated 11.12.2015 in W.P.M.P.No.51750 of 2015 in W.P.No.40091 of 2015, this Court *inter alia* passed the following order:

> "Despite having given an unconditional undertaking to vacate the subject premises by 21.09.2015, DCHL (the first respondent herein) invoked the jurisdiction of the DRT

contending that they had secured a buyer who was willing to offer more than highest bidder in the auction. As noted hereinabove the DRT passed an order of status quo on 06.10.2015 which was extended thereafter on 19.11.2015/23.11.2015. Though the petitioner herein informed the DRT that its order dated 06.10.2015 disabled them from taking possession of the subject property as permitted by the Division Bench of the High Court, the DRT continued the order of status quo on the ground that the first respondent herein had secured a prospective buyer who was willing to offer Rs.25 crores, as against the highest bid offered of Rs.22.10 crores.

While the Tribunal, in exercise of its jurisdiction under Section 17 of the SARFAESI Act, was entitled to examine whether or not the subject property should be sold to the highest bidder, or to the purchaser identified by the first respondent, it could not have negated the order of this Court, more so as the Managing Director of the first respondent (DCHL) had given an unconditional undertaking to this Court to voluntarily and unconditionally vacate the subject premises by 21.09.2015.

Prima facie, the DRT has exceeded its jurisdiction in passing an order which, in effect, has set at naught the aforesaid orders passed by this Court.

Sri L.Ravichander, learned Senior Counsel appearing on behalf of the first respondent, would seek this Court's indulgence not to vary the order of status quo passed by the DRT, and would submit that the first respondent had, perforce, invoked the jurisdiction of the DRT as the highest bid offered was far less than the market price of the subject property.

Learned Senior Counsel is, however, unable to justify the status quo order passed by the DRT which has enabled the first respondent to continue to retain possession of the subject property, avoid removing the machinery and vacating the subject premises, despite the orders passed by this Court as aforementioned, and contrary to the unconditional undertaking given by the Managing Director of the first

> respondent to this Court, to unconditionally vacate the premises latest by 21.09.2015.
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> The order of status quo was passed by the DRT on 06.10.2015, a fortnight after 21.09.2015 by which date the Managing Director of the first respondent had undertaken to vacate the premises. The DRT was bound to follow the orders passed by this Court and an order, inter parties, could not have been negated by the DRT by way of an order of status quo.
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> To the extent the DRT passed an order of status quo, thereby permitting the first respondent to remain in possession of the subject premises, the order of the Tribunal is suspended.
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> While it is open to the petitioner herein to take necessary steps, in accordance with the aforesaid orders passed by this Court, to take possession of the subject property, they shall not, until further orders, hand over possession thereof to the highest bidder in the auction or to any one else."

Mr. S. Niranjan Reddy, learned counsel for the secured creditor and Mr. D. Prakash Reddy, learned Senior Counsel for the auction purchaser submitted that this Court has viewed the *status quo* order passed by the Tribunal on 06.10.2015 as exceptional and running contrary to the common order passed by this Court in W.P.Nos.10602 and 17935 of 2015 and suspended the said order of *status quo* to the extent of taking possession by the creditor. They further submitted that if the respondents have a right of statutory appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), unless they succeed in the said appeal, they cannot interdict the right of the secured creditor to handover vacant possession of the property to the auction purchaser. They have further submitted that while the sale was confirmed on 27.05.2015 and sale certificate was issued on 09.09.2015, the Tribunal has granted *status quo* order on 06.10.2015 and that therefore, there is no justification for denying possession to the auction purchaser.

Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for respondent No.1 i.e., the principal borrower and other respondents connected to it, submitted that there are serious procedural illegalities in the conduct of sale by the secured creditor and that the respondents have succeeded in getting the similar sale of another asset set aside by the Debts Recovery Tribunal, Visakhapatnam Bench. He has further submitted that if the vacant possession is handed over by the secured creditor to the auction purchaser that may cause irreparable injury to the interest of his clients in the event of their success in the appeal.

We have carefully considered the respective submissions of the learned counsel for the parties.

The fact that the vacant possession was taken by the secured creditor and as of now, the property is in its physical possession, is not in dispute.

The only issue that needs to be addressed in these writ petitions is whether the secured creditor can be permitted to handover physical possession of the property to the auction purchaser, pending appeal before the Tribunal.

The secured creditor as well as the auction purchaser pleaded that the entire highest bid amount of Rs.22,10,00,000/- was already paid by the auction purchaser to the secured creditor. As the respondents are not in physical possession of the property, it hardly makes any difference for them whether the physical possession remains with the secured creditor or the same is handed over to the auction purchaser. Since the sale itself is subject matter of a statutory appeal before the Tribunal, the auction purchaser is bound by its outcome subject to the right of appeal of the secured creditor as well as the auction purchaser. Therefore, in order that ends of justice are met and to balance the interests of both the parties, we feel it appropriate that physical possession is handed over to the auction purchaser by the secured creditor subject to the following terms:

1. The auction purchaser shall not alter the nature of the property or in any manner encumber the same to third parties.
2. The auction purchaser shall not enter into lease with third parties for a period exceeding two years.
3. The auction purchaser shall abide by the ultimate result of the proceedings initiated by the principal borrower and the guarantors under the provisions of the Act and in the event of their success the auction purchaser shall not claim any equity.

4. The Tribunal is directed to make every endeavor to dispose of the Securitisation Appeal as expeditiously as possible and not later than one year from the date of receipt of a copy of this order.

Subject to the above directions, all the writ petitions stand disposed of.

As a sequel to disposal of the Writ Petitions, miscellaneous petitions, pending if any, stand disposed of as infructuous.

(C.V.NAGARJUNA REDDY, J)

(G. SHYAM PRASAD, J)

Date: 16.09.2016
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