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

W.P.No.10929 of 2016

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

The writ petitioner is the borrower, as defined under Section 2(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, for the default committed, the loan account is classified as non-performing asset, as defined under 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 the secured debt, the bank issued notice for taking possession of the secured asset under Section 13(4) of the Act, as part of the security measures for recovery of the debt, which is impugned in this writ petition.

Undisputedly, self same petitioner-borrower maintained WP No.27609 of 2015 and there was an interim order dated 28.8.2015 directing the petitioner to deposit an amount of Rs.2,50,000/-

while granting interim stay and the matter was later called on 15.10.2015 and 29.10.2015 and when there was no representation, the matter was adjourned to 30.10.2015 under the caption 'for dismissal'. On 30.10.2015, it was represented that the petitioner was unwell and it was adjourned and the conditional order was not even complied with and thereby the writ petition was ended in non-prosecution.

It is now no doubt by referring in para 5 of the petitioner's representation the factual scenario. The present writ petition is filed subsequent to the sale notice of the bank contemplated by Rule 8 (6) read with Rule 9(1) of S.I.(E) Rules, 2002.

Heard the learned counsel for the petitioner and perused the material on record.

Undisputedly, the earlier order of this Court was not complied with. We see no reason to admit the writ petition and pass any blanket order interdicting the securitization proceedings but for subject to the following conditions to enable the petitioner to liquidate the debt and protect his property from being sold to sub-

serve the ends of justice while disposing of the writ petition.

The Bank can put the property to E-auction as contemplated under Section 8(6) read with Rule 9(1) of S.I.(E) Rules, 2002, by fixing the date of sale, beyond two months from today. In the meantime the petitioner shall liquidate the entire debt due to the bank, so that the bank need not proceed further. If the petitioner failed to pay the entire amount due to the bank including the securitization costs and expenses within two months from today, the bank can proceed further to put the property to sale and realize the proceeds and issue sale certificate by transfer of the property. Needless to say the petitioner as a mortgager got right to liquidate the debt till the property is sold by auction and transferred by sale certificate as contemplated under Section 13 (8) of the Act and as laid down in '*Mathulal vs. Keshar Bai*[1]'.

Accordingly, the Writ Petition is disposed of. There is no order as to costs. Miscellaneous petitions pending if any, in this writ petition, shall stand closed.

JUSTICE R.KANTHA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

25th April, 2016
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[1] **AIR 1971 SC 510**