HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.8145 of 2016

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

This writ petition has been filed by the petitioner seeking Writ of Mandamus by declaring the action of the 2nd respondent/State Bank of Hyderabad in issuing E-auction-cum-sale notice dated 16.02.2016 putting to sale the house property bearing No.11-1-153, Srinagar colony, Palvoncha, Khammam District, said to be belonging to the petitioner, on 25.03.2016 as illegal, improper, null and void and consequently direct the 2nd respondent not to sell the petitioner's house property.

The facts lie in a very narrow compass. It appears the 3rd respondent a partnership firm, known by name M/s. Aditya Constructions, appears to have approached the writ petitioner with a request to offer her immovable property as a security for the loan, which it proposed to avail with the 2nd respondent/State Bank of Hyderabad, Paloncha Branch, Khammam. It appears the petitioner has fallen for sweet words used by the 3rd respondent and consequently, got induced under the trap laid by it and offered her immovable property, a house property referred to in the prayer supra, as security to the loan transaction availed by the 3rd respondent with the 2nd respondent/Bank and appropriate security interest was also created thereon. It appears the 3rd respondent purposefully committed a default in liquidating the liability towards the 2nd respondent/Bank. Hence, the 2nd respondent/Bank has initiated measures for brining to sale the secured assets by publishing auction-cum-sale notice on 28.02.2014 proposing to conduct the sale by auction on 30.03.2014 at 10.30 AM at the Branch premises Paloncha, Khammam. But, however, it appears the 3rd respondent has immediately approached the Debts Recovery Tribunal at Hyderabad by instituting S.A.No.194 of 2014 before it. The Said DRT passed an interlocutory order on 27.03.2014 directing the 2nd respondent/Bank not to proceed further with the proposed sale by auction of the secured assets subject to the condition that the petitioner before it, the 3rd respondent herein, deposits a sum of not less than Rs.20,00,000/- within a span of four weeks by way of 2 installments of Rs.10,00,000/- each to be made in two weeks time from the said order. It appears the DRT again in the same S.A.No.194 of 2014 passed another order on 07.07.2014 permitting applicant before it to deposit a sum of Rs.10,00,000/- within two weeks from that said day and directed the 2nd respondent/Bank to postpone the scheduled sale by e-auction slated for 09.07.2014. It is also the case of the petitioner that by an order passed on 22.01.2015, another order was passed by the DRT to vacate the stay in respect of item No.3 of the property mentioned in the auction-cum-sale notice so as to enable the Bank to proceed with the auction sale of the said property. According to the learned counsel for the petitioner, this is how the 2nd respondent/Bank and the 3rd respondent/principal borrower have joined hands together and proposed to sell away the property belonging to the writ petitioner while leaving intact the properties belonging to the 3rd respondent. It is also urged before us that in those set of circumstances, the petitioner herein has instituted W.P.No.6572 of 2015 and a Division Bench dealing with that writ petition by its order dated 25.03.2015 passed a detailed order directing the DRT to deal with SA.No.194 of 2014 in accordance with law within a period not exceeding six months from the date of receipt of a copy of the order. It is also note worthy that this Court has quashed the sale notice dated 09.02.2015 set out by the 2nd respondent/Bank proposing to dispose of the property of the writ petitioner alone. It is, in this context, the present sale notification which is published proposing to conduct sale by e-auction method on 25.03.2016 is attacked in this writ petition. All we need to notice is this, there is no dispute on the factual count that the petitioner has created a mortgage over a immovable property said to be belonging and owned by her offering it as a security for the financial assistance said to have been availed by the 3rd respondent with the 2nd respondent/Bank. Consequently, the petitioner herein also answers the expression 'borrower' as defined in Section 2(1)(f) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') along with and apart from the 3rd respondent herein. The 2nd respondent/Bank also answers the description of 'Bank' as defined under Section 2(1)(c) of the Act as it answers the description of a Banking company apart from being a subsidiary from State Bank of India. The expression financial asset is defined under Section 2(1)(l) of the Act in an inclusive manner by setting forth that a mortgage, charge, hypothecation or pledge of movable property; or any right or interest in the security, whether full or part underlying such debt or receivables also fall within the expression financial asset. In this view of the matter, we fail to understand as to how that the 2nd respondent/Bank cannot take up measures for securitization provided for under sub section 4 of Section 13 of the Act against the secured assets created in its favour. It is more than clear that so long as the deed of mortgage created by the petitioner in favour of the 2nd respondent/Bank is subsisting and the said mortgage is not redeemed by the petitioner, there is no escape from the fact that the 2nd respondent/Bank and also proceed against the property belonging to the petitioner also over which she created security interest. The expression security interest is defined under Section 2(1)(zf) of the Act and hence, it gets attracted to the facts and circumstances of the present case. It is no doubt true that the 3rd respondent cannot authorize the 2nd respondent/Bank to proceed against the security interest created by the writ petitioner herein, in the absence of any such measures being initiated or taken against the security interest created by the principal borrower, the 3rd respondent herein in favour of the 2nd respondent/Bank. That was the precise reason why this Court on the previous action had interfered with the action of the 2nd respondent/Bank while deciding W.P.No.6572 of 2015. It is in fact keeping the said principle in mind, the 2nd respondent/Bank is now proceeding by putting all three properties over which security interest is created in its favour at a time without proceeding against them selectively. But however, it should also be noticed that giving credit to the amount of Rs.45.00 lakhs, which has been deposited by the principal borrower over a period of time to the loan account. The 2nd respondent/Bank has notified in the impugned sale notice that the outstanding liability is approximately standing at Rs.49.54 lakhs as on 16.12.2013 together with interest to be calculated thereafter. It is for purpose of realizing this outstanding liability sale by e-auction method, as is authorized and empowered by sub section 4 of Section 13 of the Act has been initiated, but this time around the 2nd respondent/Bank has taken good care while settling the terms and conditions subject to which the sale is conducted.

So far as the 1st property is concerned, it is a rice mill bearing premises No.8-1-79 situated at Gattaigudem, KSP road Paloncha, Khammam District. Taking into account its valuation, the reserve price itself has been set at Rs.79.75 lakhs and the sale of this property is slated for 25.03.2016 from 11.30 AM to 12.30 Noon, whereas the 2nd property is sought to be sold, which is a house property bearing No.10-1-4, Chakali Bazaar, Paloncha, Khammam District, the reserve price is fixed at Rs.25.45 lakhs and this property was sought to be sold on 25.03.2016 between 01.30 PM to 02.30 PM, whereas the 3rd property was the house property bearing D.No.11-1-153, Srinagar colony said to be belonging to the petitioner herein, that was sought to be sold between 03.30 PM to 04.30 PM on 25.03.2016. It is, thus, clear that the Bank is taking no chances whatsoever in realizing the debt due to it. For instance, if the 1st property which is lined up for sale at 11.30 AM on 25.03.2016 itself fetches a bid of Rs.79.75 lakhs or more than that, which would be sufficient enough for liquidating the whole of the liability of the 3rd respondent/Bank, which was standing in the order of approximately Rs.50.00 lakhs and odd, in such an event the necessity to put to sale property Nos.2 and 3 may not arise at all. On the other hand, take an instance where there are no bids to take the 1st property as offered for sale and consequently, it remains unsold, then the bids secured for the 2nd property for which the upset price was fixed at Rs.25.45 lakhs may not fetch an offer which is capable of liquidating the entire liability standing in the loan account. In such an event, the property No.3 which is claimed to be belonging to the petitioner also has to be offered for sale then alone the entire liability can be cleared. Therefore, we expect the 2nd respondent/Bank to conduct the sale strictly and carefully and in complete accord with the terms and conditions settled in the auction-cum-sale notice dated 16.02.2016. Condition No.21 which has been incorporated therein reads as under:

> "21. If the bid amount in auction of property No.1 is sufficient to meet our dues, then the subsequent auctions will be differed. If the amount is not adequate, the property No.2 will be auctioned. If the bid amounts for property Nos.1 & 2 put together is not adequate, property No.3 will be auctioned."

The above condition makes it explicitly clear that if item No.1 or for that matter item No.2 fetch an offer to the 2nd respondent/Bank which is capable of liquidating the entire liability outstanding in the loan account of the 3rd respondent, there may not be any necessity for the 2nd respondent/Bank to proceed further with sale of property No.3. On the other hand, if the property No.3 is put to sale, the same may not be confirmed till such time the sale of either property No.1 or property No.2 is finalized and the entire amount realized therefrom is credited to the loan account and that fact is intimated to the writ petitioner by the Bank. For any reason if the sale of property No.1 or for that matter property No.2 together fetch offers which are good enough to liquidate the entire liability including incidental expenses incurred by the Bank for undertaking securitization measures, the Bank shall not proceed any further with regard to property No.3 and it shall also return the mortgage deed and the original title deed deposited by the 3rd respondent as soon as the entire liability is liquidated.

With this observation, the writ petition is disposed of as consented to by Sri E.Madan Mohan Rao, who accepted notice on behalf of the 2nd respondent/Bank and waived the same.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

21.03.2016
Note: Issue C.C. by two days
(B/o)
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