

HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.12945 of 2016

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

The petitioner is the borrower under Section 2(f) of the SARFAESI Act, 2002 (for short 'the Act') from having availed financial assistance from the 2nd respondent bank, defined under Section 2(c) of the Act, for the default committed the loan account is classified as non-performing asset as per 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 for non-liquidation of the secured debt, the bank issued notice of taking possession of the secured asset under Section 13(4) of the Act read with Rule 8(6) of the S.I. (E) Rules, 2002 and impugning the same the petitioner maintained SA No.111 of 2015 under Section 17 of the Act before the Debt Recovery Tribunal (for short 'DRT'), Hyderabad. It is his submission that there was an interim order passed by the Tribunal vide docket order dated 18.02.2015 to postpone the proposed auction, subject to the petitioner's depositing of Rs.10.00 lakhs, out of which, Rs.3.00 lakhs is directed to be deposited on or before 1.00 p.m. of 19.02.2015 which is the date and time of proposed auction, a further sum of Rs.3.50 lakhs within three weeks thereafter and the balance sum of Rs.3.50 lakhs within three weeks thereafter and made it further clear that if the petitioner failed to deposit the amounts as stated supra, including the initial deposit of Rs.3.00 lakhs, before the date and time of auction, the bank shall be at liberty to proceed with the auction sale of the schedule property and such sale shall be subject to the result of the S.A.No.111 of 2015. It is his submission that there is nothing brought to the notice of the DRT about the bank already initiated proceedings in OA No.240 of 2014 under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (for short 'RDBFI Act') and he came to know of the same only subsequently and then he filed RP

No.318 of 2015 to set aside the *ex-parte* order and further as the securitization measures are suspended by the docket order by the DRT dated 18.02.2015, he also made an application for stay of all further proceedings pursuant to the order in OA No.240 of 2014, which are still pending. It is the further submission that the DRT is not having a regular officer but for FAC Officer who has been only occasionally sitting with no certainty of coming and that he is not in a position to immediately obtain interim orders against the further proceedings in OA No.240 of 2014, that despite stay has been granted by the DRT in SA No.111 of 2015 vide order dated 18.02.2015 and that the compliance is made by him which equally operates against the bank also against enforcement of the order in OA No.240 of 2014 and as there is no time for his obtaining the interim orders against further proceedings as per orders in OA No.240 of 2014, as such the proceedings are to be stayed.

2. Heard and perused the entire material on record. Having regard to the above factual matrix, the writ petition is disposed of by giving one month time from today to the petitioner to workout his remedies against the proceedings in OA No.240 of 2014 before the DRT in RP No.318 of 2015 and connected petitions and in the meantime the bank and the Recovery Officer and any others concerned shall not proceed further pursuant to the orders in OA No.240 of 2014.

3. The writ petition is accordingly disposed of. There is no order as to costs. Miscellaneous applications, if any, pending in this writ petition, stand closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

Date: 19.04.2016

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HON'BLE SRI JUSTICE R.KANTHA RAO
AND
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