

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 40020 of 2015

ORDER: (*Per VRS,J*)

Aggrieved by the measures taken by the 1st respondent-Bank under the SARFAESI Act, 2002, the petitioner/borrower filed an appeal in S.A.I.R.No.553 of 2015. The prayer in the appeal was for setting aside a possession notice, dated 10.09.2015, issued under Section 13(4). The appeal was filed admittedly with a delay of 49 days. The delay has not yet been condoned.

2. However, the 1st respondent-Bank proceeded further and put up for sale, two out of three properties mortgaged to them. Immediately upon seeing the auction sale notice, dated 26.11.2015, the petitioner moved an application for stay in I.A.No.3626 of 2015, praying for stay of the auction. He also filed a few more interlocutory applications, about which we need not go into in this writ petition.

3. By an order, dated 03.12.2015, the Tribunal refused to grant stay of the auction. Aggrieved by the dismissal of the said application by the Tribunal, the petitioner came up with the present writ petition. While ordering notice in the writ petition on 04.01.2016, this Court

granted an interim order, subject to certain conditions, to the following effect:

“Notice before admission.

Post after Sankranti Vacation, 2016.

Pending further orders, there shall be stay of auction pursuant to e-auction notice dated 02.12.2015 so far as the property claimed by the petitioner is concerned, on condition of the petitioner depositing an amount of Rs.100.00 lakhs, out of which Rs.50.00 lakhs shall be paid on or before 11.00 a.m. on 11.01.2016 and the balance amount of Rs.50.00 lakhs shall be paid within a period of four weeks thereafter. It is made clear that in the event of default in paying any of the amounts referred above, it is open to the respondent Bank to take further steps without reference to pendency of the proceedings before this Court.”

4. It appears that the petitioner complied with the first part of the conditional order, on account of which, the auction got postponed. But, thereafter, he failed to comply with the second part of the conditional order.

5. Therefore, the respondent-Bank once again issued an auction sale notice on 20.02.2016. Challenging the said notice, the petitioner came up with another writ petition in W.P.No.9714 of 2016. The said writ petition was disposed of finally by this Court, by an order, dated 31.03.2016. The operative portion of the final order passed in W.P.No.9714 of 2016 reads as follows:

“Therefore, we permit the petitioner to deposit a sum of Rs.26.15 lacs insofar as item No.2, which is described as open land/plot located at Chittoor District, Tirupati Sub District, Tirupati, Avilala Village in Survey No. 20-B-2, is concerned. Subsequently, the said land is subdivided into Survey No. 20/B/2C, plot No. 10 admeasuring 2257.50 square feet or 250.83 square yards standing in the name of Sri K. M. Raj Sekhar. Insofar as property No. 3 open plot/land located at No. 49, Avilala Village Accounts in Survey No.20-B-2, which was subsequently sub-divided as Survey No.20/B/2C, plot No. 13 admeasuring 1890 square feet or 210 square yards standing in the name of Sri K.M. Raj Sekhar is concerned, we also permit the petitioner to deposit a sum of Rs.23.90 lacs. Apart from these two monies, the petitioner is also required to deposit the incidental expenses incurred by the 1st respondent bank towards undertaking securitization measures so far. Let these monies be deposited in one or more than one installment, but however, whole of the money shall be deposited on or before 30.04.2016, failing which, it shall be open to the 1st respondent bank to confirm the sale in favour of the highest bidder, receive the balance 75% of the bid amount, execute a sale certificate, register it and deliver vacant possession of the property so purchased by them.

The petitioner shall also deposit a sum of Rs.50 lacs on or before 30.04.2016 and upon such deposit being made, property No.1, which is stated to be a open plot admeasuring 4840 square yards, Balaji District Registrar Office, Tirupati, Chittoor District, shall not be put to re-auction again. If the petitioner commits default, once again, in depositing Rs. 50 lacs on or before 30.04.2016, it shall be open to the 1st respondent bank this time around to make sure that the advertisement receives wider publication.”

6. The effect of the above order is that the petitioner was liable to pay Rs.26,15,000/-, Rs.23,90,000/- and a sum of Rs.50,00,000/-. All these amounts total to Rs.1,00,05,000/-. It appears that the petitioner has complied with the aforesaid conditions.

7. Subsequently, the incidental expenses payable by the petitioner were calculated to be Rs.3,79,653/-, which the petitioner failed to pay within time. Therefore, the petitioner came up with an application in W.P.M.P.No.40890 of 2016 seeking extension of time for making payment of the said amount. By a separate order, we have allowed the said application. Therefore, what remains to be disposed of is only the present writ petition.

8. The present writ petition has virtually served the purpose of the petitioner, inasmuch as the auction proposed has been postponed. But, the respondent-Bank appears to have been now left in the lurch with an absolute stay. Such an absolute stay is not possible, since the liability has to be wiped out one way or the other.

9. Therefore, the Writ Petition is disposed of, directing the Tribunal to allow the amendment, condone the delay, number the appeal in S.A.I.R.No.553 of 2015, and take it up for disposal, so that the parties know where they stand. It is open to the respondent-Bank to take further steps, subject to the orders of the Tribunal. If any further auction notice is issued, the petitioner shall go only before the Tribunal, in the very same pending appeal. He shall not come up with a third round of litigation before this Court, when the appeal is pending before the Tribunal.

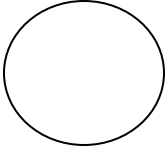
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

21st November, 2016
cbs





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