THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

<u>WRIT PETITION NO.5541 OF 2016</u>

<u>JUDGMENT</u>: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted by four (4) individuals seeking a declaration that the action of the 1st respondent – State Bank of India in taking steps to dispossess them during the pendency of the appeal No.17 of 2014 on the file of the Debts Recovery Appellate Tribunal at Kolkata as illegal.

The case of the petitioners herein is that they are bonafide purchasers of flats/individual tenements, which are got constructed by the 2nd respondent herein. It appears the 2nd respondent has availed financial assistance from the State Bank of India, Siripuram Branch, Visakhapatnam and committed default in repayment of the said loan amount. Consequently, proceedings have been initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act'). Under

Sub-Section 4 of Section 13 of the Act the District Magistrate has been approached by the bank and an order appears to have been passed on 15.10.2012 to take possession of the secured asset. That order is resisted by the petitioners on the ground that they are bonafide purchasers of 4 individual flats constructed by the 2nd respondent and that they are not in the know of the mortgage created by the 2nd respondent in favour of the bank and hence they are bonafide purchasers and they cannot be dispossessed by the 1st respondent – bank. When this plea was urged before the Debts Recovery Tribunal, Visakhapatnam by instituting S.A.No.303 of 2012, the said Tribunal decided the said case on 13.01.2014 holding interalia that it is difficult to believe that the petitioners herein as bonafide purchasers. Aggrieved by this order of the Debts Recovery Tribunal, Visakhapatnam dated 13.01.2014, the Debts Recovery Appellate Tribunal, Kolkata has been approached by the petitioners by instituting Appeal No.17 of 2014.

Sri N.Subba Rao, learned counsel for the petitioners, would urge before us that in fact the appeal was heard partly by the Debts Recovery Appellate Tribunal on 05.03.2014 and at the request of the counsel for the respondent – bank for filing objections and hearing, the case was adjourned to 12.03.2014 and thereafter it appears the matter was heard. But however, no final orders are passed for one reason or the other, including the reason that a writ petition was moved in this Court on the premise that the appellate tribunal was not functioning for want of appointment of a Presiding Officer. We are informed that an interim stay was granted in that writ petition.

Be that as it may, Writ Petition No.35512 of 2013 came to be finally decided by this Court on 28.01.2016. While dismissing the said writ petition, this Court observed that in view of the appeal preferred by the petitioners herein before the Debts Recovery Appellate Tribunal, Kolkata, no relief can be granted as prayed for.

Now, the inspiration for filing the present writ petition is that while the Appeal No.17 of 2014 is still pending for adjudication before the Debts Recovery Appellate Tribunal at Kolkata the 1st respondent is proceeding by taking steps to take possession of 4 flats in which the petitioners herein are stated to be residing.

We do not wish to enter into the controversy generated in the writ petition for, that was the very question that was engaging the attention of the Tribunal at Kolkata. Hence, it would not be appropriate for us to enter into any enquiry in that regard.

However, the interests of the 1st respondent – bank have also got to be protected. With a view to balance the interest of both the competing parties, each of the petitioners is directed to deposit a sum of not less than Rs.5,00,000/- with the 1st respondent – bank before 28.03.2016. Upon such deposit being made, the 1st respondent – bank shall not take any steps to take possession of the respective flats, which are in possession of the petitioners. If any of the petitioners commit any default in making the said payment, it shall be open to the 1st respondent – bank to take possession of that particular flat.

It is made clear that this payment of Rs.5,00,000/- each by the petitioners will abide by the result in the appeal No.17 of 2014 pending on the file of Debts Recovery Appellate Tribunal, Kolkata.

In case, the petitioners loose the said appeal and also do not desire to enter into any settlement with the 1st respondent – bank for protecting their possession, the 1st respondent – bank shall refund the sum of Rs.5,00,000/- together with interest at the rate of 6% P.A. to the respective petitioners and then it shall be open to the 1st respondent – bank to recover possession of the flat concerned from them. In case, the petitioners succeed in the appeal No.17 of 2014, it goes without saying that the 1st respondent – bank will not be justified in retaining the said money and it will have to be refunded to the respective petitioners together with interest at the rate of 6% P.A. unless the Debts Recovery Appellate Tribunal, Kolkata orders it otherwise.

It shall be open to the petitioners as well as the 1st respondent – bank to lodge an appropriate complaint with the police at Visakhapatnam as well as Eluru in West Godavari District as to how the 2nd respondent has defrauded the bank as well as the petitioners and bring him to book.

We hope and trust that the Debts Recovery Appellate Tribunal at Kolkata will deal with the appeal No.17 of 2014 as expeditiously as possible, preferably within a maximum period of three (3) months from the date of receipt of a copy of this order.

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

24.02.2016

Note:
Issue C.C. in three (3) days

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