HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition Nos.19120 & 27315 of 2016

& 1064 of 2014

Date:15.9.2016

Writ Petition No.19120 and 27315 of 2016

Between:

Indian Overseas, Hyderabad,

reptd., by its Chief Manager-Y.Srinivasa Rao

..... **Petitioner**

And:

Debts Recovery Tribunal,

Hyderabad and two others.

....**Respondents**

Counsel for the petitioner: Mr. V.K.Viswanadham

Counsel for respondent No.2: Mr. Vedula Srinivas

Counsel for respondent No.3: Mr. S.U.V.Srinivas

Writ Petition No.1064 of 2014

Between:

T.Satyavathi,

W/o T.Sudarshana Chary

..... **Petitioner**

And:

Indian Overseas Bank,

Hyderabad, reptd., by its

Regional Manager and another.

....**Respondents**

Counsel for the petitioner: Mr. P.Shiv Kumar

Counsel for the respondents: Mr. M.V.K.Vishwanadham

Counsel for respondent No.3: Mr. S.U.V.Srinivas

The Court made the following:

COMMON ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

Writ Petition No.19120 of 2016 is filed by the Indian Overseas Bank for issue of a writ of *Certiorari* for quashing order, dated 11.5.2016, in Securitization Appeal No.169 of 2016 on the file of respondent No.1-Tribunal.

Writ Petition No.27315 of 2016 is filed by the same petitioner for issue of a writ of *Certiorari* for quashing order, dated 03.8.2016, in Securitization Appeal No.169 of 2016 on the file of respondent No.1-Tribunal.

Writ Petition No.1064 of 2014 is filed by the borrower under loan account No.15460327110020 for a *Mandamus* to declare the action of the respondents in not releasing the original title documents in respect of the property bearing Shop Nos.1 and 2 in Ground Floor, Raghunatha Estate, bearing Municipal No.9-109/A and B, 9-109/2part in Survey Nos.238, 241 and 243part situated at P & T Colony, Gaddiannaram, Saroornagar Mandal, Ranga Reddy District, despite her readiness and willingness to pay the outstanding dues and imposing the condition of discharging the dues pertaining to M/s Bharanikanth Health and Fitness Centre, to which she is not a guarantor, as illegal and arbitrary.

The parties are referred to as they are arrayed in Writ Petition No.19120 of 2016.

Respondent No.3 has borrowed certain amounts under the afore-mentioned loan account from the petitioner-bank. Respondent No.2 entered into an agreement of sale with respondent No.3 for purchase of the mortgaged properties. Respondent No.3 has approached the petitioner with a request to close the loan account by offering to make payment of the balance outstanding amount of Rs.43,40,400/- in pursuance of the agreement of sale entered into by her with respondent No.2. Considering the said request, the Chief Manager of the petitioner-bank addressed letter, dated 26.12.2013, to respondent No.3, which reads as under:

> "We refer to your letter, dated 06.11.2013, informing us that you wanted to close the loan account and requested us to release the document after closure of the loan account.
>
> Now, we want to release the documents on the following terms and conditions:
>
> (1) The documents will be released on closure of the loan account No.271100020. The present balance outstanding is about Rs.43,40,000/-.
>
> (2) The sale consideration of the security mortgaged (now to be released) is for Rs.85,00,000/- as per agreement of sale, out of which Rs.5,00,000/- already deposited in the loan account. We will release the documents on closure of the loan account No.271100020 of M/s Bharanikanth Foods Services and also on depositing remaining amount of Rs.36,60,000/- (i.e. Rs.80,00,000 – 43,40,000) in another account

> M/s Bharanikanth Health & Fitness, to which you are a guarantor."

As the proposal mentioned in the afore-mentioned letter has not fructified and the properties were sought to be sold, respondent No.2 has filed Securitization Appeal No.169 of 2016 before respondent No.1-Tribunal to set aside the sale. Respondent No.1 passed the order, dated 11.5.2016, which reads as under:

> (1) The bank is directed to proceed with the sale but shall not confirm the same provided the applicant deposits Rs.50 lakhs within a period of six weeks.
>
> (2) Upon receipt of the same, the bank is directed to keep the same in a "No lien" interest bearing account for a period of one year in the name of the Registrar of this Tribunal and communicate within seven days the balance amount, if any, payable by the applicant for repayment of the entire dues. The applicant is directed to deposit the same within two weeks thereafter.
>
> (3) The bank is also directed to deposit the document title pertaining to the property with the Registrar of this Tribunal.
>
> (4) After receipt of the entire amount, the physical possession of the property shall be handed over to the applicant, who will act as a Receiver of this Tribunal till disposal of the Civil suit pending before the District Court, Ranga Reddy District."

Assailing the said order of the Tribunal, the petitioner filed Writ Petition No.19120 of 2016.

On compliance with the afore-mentioned order, respondent No.2 has filed another application in the pending Securitization Appeal, on which, the Tribunal by order, dated 03.8.2016, has appointed a Special Officer to take possession of the properties upon prior notice to the parties and hand over the same to respondent No.2, if necessary, by taking police aid. Questioning the said order, the petitioner filed Writ Petition No.27315 of 2016.

In Writ Petition No.1064 of 2014, the learned single Judge passed the following interim order on 21.01.2014:

> "Having regard to the submissions made by learned counsel for the petitioner, there shall be interim direction directing the Indian Overseas Bank, Dilsukhnagar Branch, Hyderabad (second respondent), to release the document in respect of the property bearing Shop Nos.1 and 2 in Ground Floor, Raghunatha Estate, bearing Municipal No.9-109/A and B, 9-109/2part in Survey Nos.238, 241 and 243 part situated at P&T Colony, Gaddiannaram, Saroornagar Mandal, Ranga Reddy District.

During the hearing of these Writ Petitions, it has come out that the sale of the mortgaged properties belonging to respondent No.3 in respect of which respondent No.2 holds the agreement of sale fetched Rs.82,21,819/-. In pursuance of the orders passed by the Tribunal, respondent No.2 has deposited Rs.58,09,079/- and has agreed to pay the balance amount of Rs.24,12,740/-, after giving credit to Rs.5 lakhs which was paid by her in pursuance of the agreement of sale and adjusted towards the loan account, as evident from the letter, dated 26.12.2013, of the Chief Manager of the petitioner-bank.

This Court has adjourned the case to enable the learned counsel for the petitioner to obtain instructions as to whether his client has any objection for registering the sale deed in favour of respondent No.2 on receiving the balance amount of Rs.24,12,740/-.

Today, Mr. V.K.Viswanadham, the learned counsel appearing for the petitioner, in all fairness, submitted that if the balance amount is paid by respondent No.2, his client has no objection for issuing the sale certificate and registering the same in favour of respondent No.2 besides handing over to her the original title deeds of the mortgaged properties deposited by respondent No.3.

Mr. S.U.V.Srinivas, the learned counsel for respondent No.3, submitted that while his client may not have any objection for registration of the sale certificate in favour of respondent No.2 by the petitioner, she is entitled to the refund of the balance amount as, she has not stood as a guarantor in respect of the other loans sanctioned by the petitioner-bank to third parties.

In our opinion, the right of respondent No.3 for refund of the balance amount in excess of the loan amounts lying with the petitioner-bank needs to be adjudicated by the Debts Recovery Tribunal in an appropriate proceeding that may be initiated by her. Therefore, leaving this right of respondent No.3 open, we dispose of the Writ Petitions in the following terms:

(1) Within 10 days from today, respondent No.2 shall pay the balance amount of Rs.24,12,740/- to the petitioner-bank, upon which, the petitioner shall issue and register the sale certificate, free from all encumbrances, in favour of respondent No.2 besides handing over the possession of the property along with the original title deeds deposited by respondent No.3;

(2) While the petitioner is entitled to adjust the balance of excess amounts recovered through sale of the properties towards other loan accounts, respondent No.3 shall be free to avail appropriate legal remedy for refund of such balance amount before the Debts Recovery Tribunal, Hyderabad; and

(3) Respondent No.2 shall withdraw Securitization Appeal No.169 of 2016 pending before the Debts Recovery Tribunal, Hyderabad.

As a sequel to disposal of the Writ Petitions, interim order, dated 21.1.2014, in WPMP.No.1213 of 20154 is vacated and all the pending WPMPs in the Writ Petitions filed by the petitioners for interim relief are disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

15th September 2016
DR