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

Writ Petition No.13829 of 2016

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

The writ petitioner is the borrower under Section 2(f) of the SARFAESI Act, 2002 (for short 'the Act') having availed financial assistance from the 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 earlier there was e-auction notice issued by the Bank.

The back ground facts necessary to mention in this context are that there was *inter se* suit for partition in O.S.No.146 of 2010 on the file of the VII Additional District Judge, Ongole between the proprietary entity and his other family members. An interim order was passed to which the authorized officer of the secured creditor bank is the first defendant and respondent. Impugning the order of the lower Court, there was revision maintained in this Court before a learned Single Judge in C.R.P.No.1899 of 2015 where there was an interim order dated 7.5.2015which reads as follows:

> " Issue notice before admission returnable in four weeks.
>
> The learned counsel for the petitioner is also permitted to take out personal notices to the respondents by RPAD and file proof of service.
>
> List the matter after four weeks.
>
> In the meantime, if the e-auction of sale is conducted on the scheduled date, the same shall not be finalized."

It is also to mention in this context that the petitioner moved against the respondent secured creditor and the authorized officer in S.A.No.140 of 2015 before the Debts Recovery Tribunal, Visakhapatnam, and there was an interim order dated 19.05.2015, which reads as under:

> "It was submitted, inter alia, by the Learned Advocate for the Applicant Bank that the Bank has published a Sale Notice to sell the property on 14th May, 2015. In the meantime, a third party has moved the Hon'ble High Court and obtained order of stay for the e. auction to be held on 14th May, 2015 by the Bank. Since the order of stay is continuing, there is no urgency in the matter. However, the Bank is directed to file written objection within a period of two weeks with a copy to the learned Advocate for the Applicant and the Applicant is also at liberty to file rejoinder within two weeks thereafter."

It is the submission of the counsel for the petitioner that though the earlier proposed e-auction not be confirmed and no further steps could be taken as per the interim order in the revision passed by the Hon'ble Single Judge of this Court supra, that is the fact reiterated in the order of the DRT as a continuation and once such is the case by virtue of the judicial orders the bank is not entitled to proceed further.

Whereas it is the submission of the learned counsel for the respondent-bank that order is on its face and undisputedly confined to the e-auction that was scheduled to be held on 14.5.2015 and from order of the DRT, it is clear that parties are at liberty to move the Tribunal if there is any urgency upon prior notice to the other side.

Undisputedly, the petitioner did not move the DRT. It is his submission that though the petitioner is supposed to move the DRT there is no regular officer and the FAC officer is from Kolkata and there is a strike going on by the Advocates at Kolkata and there is uncertainty on sittings and mean time if the bank is going to conduct e-auction scheduled to be held on 27.04.2016 the rights of the petitioner borrower being prejudized.

Heard the learned counsel on either side and perused the material on record.

Having regard to the factual matrix and from the contention of the counsel for the respondent Bank, if there is no order in

force preventing the bank from proceeding with the auction as scheduled and from no time to enable the secured debtor to obtain any interim order from the DRT in the pending matter; the writ petition is disposed of before admission with the following equitable directions to sub serve the ends of justice; (1) Two months time is fixed from today to enable the petitioner borrower to obtain any necessary interim orders from the DRT. (2) In the mean time, the bank can proceed further with conducting of the e-auction scheduled to be held on 27.04.2016, however, the bank shall not finalize the auction sale, but for collecting 25% of the bid amount, not to collect balance bid amount of 75% and not to confirm sale by issuing sale certificate transferring the property. (3) It is not doubt subject to the condition of the petitioner depositing a minimum of Rs.27,00,000/- (Rupees twenty seven lakhs) on or before 31st May, 2016. If the petitioner failed to pay the amount, in compliance of the order, the bank can proceed with finalization of the auction sale and issue sale certificate by transferring the property.

Accordingly, the Writ Petition is disposed of. No costs.

Miscellaneous applications, if any, pending shall stand closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

22nd April, 2016
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