THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR JUSTICE B. SIVA SANKARA RAO

WRIT PETITION NO.6626 OF 2016

ORDER: *(As per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Learned counsel for the petitioner seeks permission to implead State Bank of Hyderabad as the eighth respondent.

Permission is accorded.

This writ petition is filed for declaring the action of the respondents in conducting the auction on 03.03.2016, as per the auction notice published on 30.01.2016, proposing to sell the residential house property belonging to the writ petitioner situate at Plot No.59 bearing H.No.3-8-261, Chandrapuri Colony, Road No.3, Mansoorabad Village, Saroornagar Mandal, L.B. Nagar, Ranga Reddy District, as bad in law.

In view of the order proposed to be passed by us today, it may not be really necessary to advert to the facts in great detail. The respondent-bank answers the description of the expression "Bank" as defined in Section 2(1)(c) and the petitioner who is stated to be a guarantor for the loan said to have been availed by the respondent no.4, who also answers the description of the term "borrower" as per Section 2(1)(f).

> "bank" means—
> (i) a banking company; or
> (ii) a corresponding new bank; or
> (iii) the State Bank of India; or
> (iv) a subsidiary bank; or
> (v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;

> "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or

> pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

The mortgage created by the fourth respondent in favour of the eighth respondent bank, which answers the description of "Secured Asset" is defined in Section 2 (zc).

> "Secured Asset" means the property on which security interest is created

The debt has become overdue and it was declared as a non-performing asset. In those circumstances, the measures adopted by the Bank, particularly, available under Section 13 read with Subsection (1) of Section 14 of the SARFAESI Act, 2002, cannot be faulted on any count, as they are in complete accord with the provisions contained in those sections. But however, it is brought to our notice that as recently as on 24.02.2016 a substantial amount of Rs.76.00 lakhs has been paid to the loan account. Hence, it is reasonable to infer that the petitioner is making honest and sincere efforts to liquidate the entire liability. Sri V. Ramachander Goud, learned counsel for the petitioner would submit that, if the petitioner is granted time upto 30.04.2016, the petitioner herself on her own or with the help and assistance of respondents 4, 5 & 6 or any other third party, the entire outstanding liability will be cleared. We, hope and trust that the petitioner will live upto this promise to liquidate the outstanding liability in one or more number of installments, but however, the same shall be cleared before 30.04.2016. Till such time, the respondent bank may not confirm the sale in favour of the best bidder and it shall also not receive the balance 75% of bid amount which the best bidder was required to deposit upon accepting his bid. In case, a default is committed by the petitioner in living upto the promise made, it shall be open to the bank to proceed further in the matter by confirming the sale in favour of the best bidder or undertake sale by republishing the sale notice maintaining the thirty (30) days time gap limit as contained in Rules 8 and 9 of The Security Interest (Enforcement) Rules 2002.

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

Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR. B. SIVA SANKARA RAO

Date:02.03.2016
sp

note: cc tomorrow
b/o
sp