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

WRIT PETITION No. 10154 OF 2016

O R D E R : ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

The petitioner claims that he is a *bona fide* purchaser of a residential plot comprising of 938 square yards situate in Survey No. 183 (part) at Kondapur Village, Serilingampally Mandal, Ranga Reddy District. It appears, the 2nd respondent company has availed certain financial assistance from the 1st respondent bank and committed default in making repayment thereof. Consequently, the debt has been declared as a *'non-performing asset'* by the said bank and it started taking measures for securitization of the loan account. At that stage, the 2nd respondent company approached this Court by instituting Writ Petition No. 31862 of 2015. Entertaining the said Writ Petition, this Court, on 30.09.2015, directed the 2nd respondent company, the petitioner in that case, to deposit a sum of Rs. 1 crore within a period of six weeks and a further sum of Rs. 1 crore within a further period of six weeks thereafter.

Sri P. Sriharsha Reddy, learned counsel, who has accepted notice on behalf of the 1st respondent bank, would inform us that the order of this Court passed on 30.09.2015 in Writ Petition No. 31862 of 2015 has not been complied with at all and not even one installment of the two installments of deposit of Rs. 1 crore each has been made by the said company. In those set of circumstances, public notice –cum- tender –cum- auction for sale of the secured asset has been notified on 01.03.2016 proposing to conduct the sale by public auction method on 01.04.2016 at 03.00 P.M. at the bank's premises at 6-3-865, Ground Floor, My Home Jupally, Opp. Green Park, Green Land, Hyderabad.

Challenging the said notice of sale by public auction, the present Writ Petition is filed.

Before adverting any further, it is only appropriate for us to notice the fact that the petitioner herein has earlier approached the 1st respondent bank for an amicable settlement of the issue insofar as the secured asset over which he has some interest. The 1st respondent bank, by its communication, dated 29.12.2015, accepted the request of the writ petitioner herein for releasing the secured asset, which was mortgaged with the said bank by the 2nd respondent herein earlier, subject to the terms and conditions stipulated therein. The petitioner herein has also deposited upfront a sum of Rs.60 lacs, receipt of which the bank has acknowledged on 29.12.2015. The balance amount of Rs. 90 lacs, which the petitioner has offered as part of settlement exercise, was directed to be deposited on or before 31.01.2016. In such an event, the bank has to release the secured asset, over which the petitioner has interest, from mortgage. Thereafterwards, the petitioner herein approached the bank again on 28.01.2016 seeking extension of time for payment of the balance amount of Rs. 90 lacs up to 31.05.2016. Obviously, since the bank has not accepted this request and it has chosen to proceed further by publishing the notice on 01.03.2016, the present Writ Petition is filed.

When once the offer made by the petitioner has been accepted by the 1st respondent bank, subject to the terms and conditions stipulated therein, as was reflected in the communication, dated 29.12.2015, which was placed at page No. 15 of the paper book, we fail to understand as to how we can step-in and interdict the exercise sought to be carried out under sub-section (4) of Section 13 of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 by the 1st respondent bank, which answers the description of 'bank' as defined in Section 2(1)(c) of the SARFAESI Act, in view of the notification published in that regard. Further, the principal borrower, the 2nd respondent company, has committed default. It has created security interest. Consequently, the expressions 'secured asset' and 'property', as defined in Section 2(1)(zc) and Section 2(1)(t) gets attracted. In that view of the matter, the 1st respondent bank is entitled to take measures for securitization, as provided for under Section 13 of the SARFAESI Act. The demand notice issued under sub-section (2) of Section 13 of the Act was found to be non-responsive by the borrower as well as the guarantors. In that view of the matter, the follow-up action contemplated by sub-section (4) of Section 13 can be initiated and hence, we cannot find fault with the 1st respondent bank in initiating the follow-up action, as provided for under Section 13(4) of the Act. Therefore, the impugned notification dated 01.03.2016 cannot be interdicted by us.

But however, the request of the petitioner that he may be provided some little more time to enable him to liquidate the liability in one or more than one installment in quick time, so that he can save the immovable property over which he has subsisting interest, deserves to be considered as the interests of the bank as well as the petitioner can be satisfactorily balanced. The petitioner has already paid Rs.60 lacs out of the agreed amount of Rs.150 lacs. The balance Rs.90 lacs was, in fact, required to be paid by him by 31.01.2016 itself with which condition he has not complied with. He sought for time till 31.05.2016, which request the bank has not accepted. In the given facts and circumstances, we consider that ends of justice would be served adequately if the petitioner is accorded time up to 30.04.2016 for payment of the balance Rs.90 lacs, so that the necessary follow-up action can be taken by the 1st respondent in terms of and in accordance with the communication issued by it on 29.12.2015. Any default committed by the petitioner in making payment of Rs.90 lacs latest by 30.04.2016 would leave liberty to the 1st respondent bank to proceed further by confirming the sale, which might be conducted on 01.04.2016, if the response of the bidders was found to be appropriate by the 1st respondent bank. The 1st respondent bank will also be at liberty to receive the balance 75% amount from the bidder and then, execute a sale certificate, register it and deliver the vacant possession of the property, which was sold in public auction, to the highest bidder, without any further reference to this Court.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

30th March 2016

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