

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice G.Shyam Prasad

Writ Petition No.8032 of 2016

Date: 29.09.2016

Between:

M/s.Manoharamma Hotel Investment Pvt. Ltd.
Rajahmundry rep. by its Director
Sri Akkineni Manohar Prasad

... Petitioner

and

The Authorised Officer
Bank of India
Rajahmundry Branch
Routhu Mansion, Rajahmundry and 2 others

... Respondents

Counsel for the Petitioner: Mr.PAV.Bala Prasad

Counsel for respondent No.1: Mrs.T.Vidya Rani

**Counsel for respondent No.2: Mr.B.Narayana Reddy,
Asst. Solicitor General**

Counsel for respondent No.3: Mr.Kowturu Vinaya Kumar

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed feeling aggrieved by E-Auction Sale Notice, dated 05-02-2016, issued by respondent No.1.

The learned Counsel for the petitioner submitted that as the Debt Recovery Tribunal has not been functioning properly in the absence of the regular Presiding Officer, his client was compelled to approach this Court; and that in view of the interim order granted by this Court in the Writ Petition, the sale has not been confirmed in favour of respondent No.3 and the sale certificate has not been issued so far.

The learned Counsel has also argued the case on merits by mainly advancing two submissions *viz.*, (1) that respondent No.1 failed to maintain the mandatory gap of 30 days between the Notice issued under Section 6 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), and the E-Auction Sale Notice, dated 05-02-2016; and (2) that for recovery of a sum of Rs.2 Crores, respondent No.1 has sold the subject property for a sum of Rs.10.36 Crores, which is a serious illegality.

In our opinion, Point No.2 urged by the learned Counsel for the petitioner requires to be adjudicated based on the evidence to be recorded by the Tribunal. The learned Counsel submitted that there is a likelihood of a new Officer taking charge of the Debt Recovery Tribunal, Visakhapatnam, very soon and that the petitioner may be permitted to avail the remedy under Section 17 of the Act. He has further submitted that in order to enable the petitioner to seek appropriate interim relief before the Tribunal, the interim order granted by this Court may be continued for a reasonable period.

Mrs.T.Vidya Rani, learned Counsel for respondent No.1, and Mr.K.Pavan Kumar, learned Counsel for respondent No.2-auction purchaser, contended that the petitioner has been successfully prolonging the litigation on one pretext or the other; that respondent No.3 has already deposited 25% of the auction amount in March, 2016; and that he has incurred a huge loss of interest on such deposit.

In our opinion, in the absence of any serious dispute relating to its liability, the petitioner cannot prevent respondent No.1 from realizing its debt by resorting to the litigation again and again. Since the issues which need to be adjudicated by the

Tribunal are raised by the petitioner, the Writ Petition is disposed of in the following terms:

“(1) Interim order of stay of confirmation of sale granted by this Court shall continue for a period of one month within which time the petitioner shall deposit 25% of the outstanding liability along with interest.

(2) If such amount is paid, the petitioner is entitled to seek appropriate interim order before the Debt Recovery Tribunal.

(3) If the petitioner commits default in payment of such amount, the interim stay granted by this Court shall automatically stand vacated and it is barred from seeking any interim relief before the Tribunal and respondent No.3 shall be free to file an application before the Debt Recovery Tribunal for appropriate orders.

As a sequel to disposal of the Writ Petition, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(G.Shyam Prasad, J)

Dt: 29th September, 2016
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