THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.6270 & 8635 of 2016

W.P.No.6270 of 2016

Between:

M/s. Aquadev India Limited.
Rep. by its Director, Dr. Joseph George.

PETITIONER

And

1. The Recovery Officer, Debt Recovery Tribunal, Visakhapatnam, and others.

RESPONSENTS

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.6270 & 8635 of 2016

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

While the first writ petition is by a Company, which claims to have taken over the assets of a Partnership firm much before the partners created a equitable mortgage in favour of the bank, the petitioners in the second writ petition are the borrowers.

2. Heard learned counsel for the petitioners and the learned counsel for the Bank.

3. The bank filed an application in O.A.No.584 of 2002 on the file of the Debts Recovery Tribunal, Visakhapatnam. The same was decreed on 29.10.2003. The operative portion of the judgment of the Tribunal that contains a decree, reads as follows:

> "In the result, the OA is allowed with costs. D1 to 8 are jointly and severally liable to pay Rs.9,44,04,098.39 ps under cash credit account together with interest @21.25% per annum with quarterly rests thereon from the date of OA till date of this order. They are also jointly and severally liable to pay subsequent simple interest @ 21.25% per annum on Rs.9,44,01,098.39ps from the date of this order till realization. Similarly, D8 to 12 are jointly and severally liable to pay Rupees One Crore to the applicant bank. The defendants are given three months time to pay the debt. In default, the mortgaged immovable properties mentioned in the Schedule Nos.1 to 79 belonging to defendants shall be sold and the sale proceeds be deposited into the Tribunal for the purpose of applying towards discharge of the debt. Similarly, in default, the pledged plant and machinery and fixtures and fittings with buildings mentioned in Schedule No.80 shall be sold subject to first charge of D13, and the sale proceeds if any remaining after satisfying the debt due to D13, shall be deposited into the Tribunal for the purpose of applying towards discharge of the debt. It is further ordered that any amounts due to defendants from their debtors shall be collected, and the same shall be deposited into the Tribunal for the purpose of applying towards discharge of the debt. Accordingly issue Recovery Certificate."

4. Pursuant to the said decree, the recovery officer initiated proceedings and passed an order dated 18.02.2016 in R.P.No.213 of

2003. Contending that they have taken over the assets and liabilities of the Partnership firm much before the date of creation of the mortgage, a third party company has come up with the first writ petition. The borrowers have come up with the second writ petition.

5. Admittedly, there is a remedy before the Presiding Officer of the Tribunal under Section 30 of the 1993 Act, as against the order passed by the Recovery Officer. Admittedly, the petitioner in the first writ petition has filed an appeal in I.R.No.789 of 2016 on 04.03.2016. But for want of a Presiding Officer at Visakhapatnam, the appeal was neither numbered nor heard. Only recently, a Presiding Officer has been appointed.

6. In the light of the above background, this Court while entertaining the 1st writ petition at the instance of the third party company, passed an interim order to the following effect on 14.03.2016, which reads as follows:

> "Notice before admission returnable in four (4) weeks.
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> Learned counsel for the petitioner is permitted to take out notice to the respondents by registered post with acknowledgement due by supplying the entire paper book in the writ petition and file proof of service into the Registry.
>
> Sri K.B. Ramanna Dora, learned standing counsel for the 2nd respondent seeks time to file a detailed counter – affidavit in the matter.
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> The threatened sale by auction slated for 24.03.2016 may go on and the 2nd respondent – bank may also receive the bids and receive only 25% of the bid amount. But however, it shall not issue a confirmation letter of sale nor should it accept the balance 75% of bid amount subject to the petitioner – company depositing a sum of not less than Rs.50,00,000/- (Rupees fifty lakhs only) on or before 29.03.2016 and a further sum of Rs.50,00,000/- (Rupees fifty lakhs only) on or before 30.04.2016 to show its bona fides and also to support its claim that its liability vis-à-vis the secured asset is only Rs.1 crore, this arrangement is ordered. Should the petitioner commit a default in making any of these payments by installments, the 2nd respondent – bank is at perfect liberty to proceed further and confirm the sale in favour of the best bidder and take necessary follow-up action without any further reference to this Court and without having any regard for the pendency of this writ petition."

7. It is stated that the conditions imposed in the aforesaid interim order have been complied with by the first writ petitioner.

8. Though a similar interim order was passed on 22.03.2016 in the second writ petition, the borrowers have not complied with the conditional order. Therefore, they cannot expect any further relief. Hence W.P.No.8635 of 2016 is dismissed.

9. Insofar as the first writ petition is concerned, the petitioner is not at fault since it has filed a regular appeal under Section 30 which could not be taken up for want of Presiding Officer. Now that a Presiding Officer has been appointed, the Tribunal can take up the appeal and deal with the same. But the Tribunal should deal with it within a time frame, in view of the claim made by the bank that the liabilities have mounted to a very staggering figure.

10. In view of the above W.P.No.8635 of 2016 is dismissed. However, it shall not bar the Tribunal from adjudicating the appeal filed by the borrowers against the order passed in R.P.No.213 of 2003.

11. W.P.No.6270 of 2016 is disposed of directing the Tribunal to take up the appeal in I.R.No.789 of 2016, pending out of R.P.No.213 of 2003 and dispose it of within a period of two months from the date of receipt of a copy of this order. Until then, the benefit of the interim order granted by this Court shall continue, in view of the petitioner having complied with the conditional order.

12. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE V. RAMASUBRAMANIAN

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JUSTICE G. SHYAM PRASAD

16th November, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.6270 & 8635 of 2016

Date: 16-11-2016

Js.