THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.3983 of 2016

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

The petitioner herein sought for a writ of Mandamus for declaring the action of the respondent-State Bank of India in notifying sale of the immovable property, as a measure of realising the debt outstanding the petitioner as bad in law.

2) It is represented that the petitioner herein is a guarantor to a loan transaction, where a sum of Rs.7,50,000/- financial assistance was availed by the principal debtor. Though, it is stated that certain amounts have been repaid, but however the loan account remained unpaid and outstanding liability is Rs.7,53,445/-. Hence it was declared as a non performing asset. The Parliament created a special mechanism for the purpose of securitisation of the outstanding liabilities to Banks and other financial institutions by enacting the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act'). The respondent, which squarely answers the expression 'Bank' as defined in Section 2(1)(c) of the Act, has initiated necessary action under sub-section (2) of Section 13 of the Act by issuing a demand notice calling upon the principal borrower as well as the guarantor, the writ petitioner herein, who incidentally also answers the expression of 'borrower' as defined in Section 2(1)(f) of the Act to liquidate outstanding liability to the extent of Rs.39,46,868/- as on 07.02.2013. But, however, acting through Sri S.R.Sreerama Murthy, Advocate, Kadapa, the respondent-Bank on 02.08.2013 has admitted that it was by mistake the notice mentioned outstanding liability as Rs.39,46,868/- instead of Rs.5,52,650/- as on 29.05.2013. But, however, since the said amount

also remained unpaid, even after lapse of more than two years time, the respondent-Bank has now taken out the necessary publication of the notice on 18.01.2016 proposing to sell the secured asset by way of auction. It is in this context the present writ petition came to be instituted.

3) When once the notice of demand drawn under sub-section (2) of Section 13 of the Act has remained non-responsive and the debt does not get cleared fully, the respondent-bank is entitled to proceed and take measures as provided under sub-section (4) of Section 13 of the Act and that is what exactly by publication of notice of proposed sale of the secured asset, is done. Hence we are not in a position to find any legal infirmity in the action of the respondent-bank in taking out such a notice. There is nothing improper or irregular about it. It is therefore not possible to grant the relief as prayed for in the writ petition.

4) But, however, the learned counsel for the petitioner would urge that if time is granted up to 30.03.2016, the petitioner would liquidate the entire outstanding liability. While it is not for us to grant any such time as prayed, but, however, we feel that ends of Justice would be better served if we permit the petitioner to liquidate the entire liability on or before 30.03.2016. Hence, the respondent-bank may proceed with the proposed auction, but however, it may not confirm the sale in favour of the highest bidder/best bidder till 04.04.2016. It may however proceed in taking the follow up action on or after 04.04.2016, provided the writ petitioner has not liquidated the entire liability by the said date. It is also made clear that any such follow up action would be initiated in case of default of liquidating the liability but not otherwise and such measures may be taken without any further reference to this Court.

5) The writ petition accordingly stands disposed of. No costs.

Consequently, miscellaneous petitions, if any shall stand closed.

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JUSTICE NOOTY RAMAMOHANA RAO

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Dr. JUSTICE B.SIVA SANKARA RAO

23.02.2016
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