

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.33251 of 2016

Date:29.9.2016

Between:

Devarasetty Anasuyamma,
W/o D.Bala Eswaraiah

..... Petitioner

And:

The State Bank of India, Ongole Branch
reptd by its authorized Officer and five others.

....Respondents

Counsel for the petitioner: Mr. P.Durga Prasad

Counsel for respondent No.1: Mr. L.Jagannadham
For Mrs. R.Aruna

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed feeling aggrieved by order, dated 31.8.2016, in CrI.M.P.No.75 of 2016 on the file of the learned Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, Kurnool.

We have heard Mr. P.Durga Prasad, learned counsel for the petitioner and Mr. L.Jagannadham, learned counsel representing Mrs. R.Aruna, learned counsel for respondent No.1.

The petitioner is a guarantor in respect of the loan sanctioned by respondent No.1-bank to respondent No.2. When the residential property, which was mortgaged by the petitioner as a guarantor, was sought to be sold along with the primary security offered by respondent No.2, she has filed Writ Petition No.5675 of 2016. A Division Bench of this Court by order, dated 25.02.2016, while disposing of the said Writ Petition made certain observations and gave the directions which are as under:

“It will be difficult at this stage for us to speculate that there would be adequate number of buyers available readily for buying Item No.1 of the notice drawn under Section 13(4). Equally, we may not be able to speculate as to whether the bids will be fetching any offer beyond Rs.1.88 Crores as well. In the event if any bidder comes forward and offers a sum of more than Rs.1.88 Crores for purchasing Item No.1 and accordingly deposits the bid amount, we are confident that the 1st respondent-Bank would be in no urgency whatsoever to liquidate Item

No.2 of the properties sought to be sold-out now. Any such attempt would be a redundant exercise. But however, since the 1st respondent-Bank perhaps could not be in a position to ascertain with any sense of reasonable assuredness that for the 1st Item itself bids would be received for an amount which is far higher than the outstanding liability, we propose to regulate the exercise liable to be indulged in by the Bank in the following manner :

9. It shall be open to the 1st respondent-Bank to put to sale by way of public auction/e-auction both the items of the secured interests, but however, if bids are already received in so far as item no.1 is concerned for a value which is higher than the outstanding liability of the 3rd respondent-borrower, the further necessary action of opening the bids received for the 2nd item of the secured asset, namely, residential plot belonged to the petitioner, may not be processed. Only in the event when bids are not received which can liquidate completely the liability of the borrower or when any difficulty arises for realizing the bid amount, then perhaps, the 1st respondent-Bank can process the bids received for the 2nd Item of the secured asset. The 1st respondent-Bank may open the bids for both the Items and declare as to who is the best bidder amongst those who have offered their bids, but however, if the offer for the 1st Item of the secured asset crosses the amount of outstanding liability, then the 1st respondent- Bank may not issue any letter of confirmation in favour of the best bidder for 2nd Item for depositing the balance money. Let the exercise be carried out in that manner.”

Learned counsel for respondent No.1 has submitted that the proposed auction, which was questioned in Writ Petition

No.5675 of 2016, has not taken place and that, in order to conduct a fresh auction, his client has obtained order, dated 31.8.2016. He has, however, fairly agreed that even in respect of the fresh auction, respondent No.1 is bound by the directions issued by this Court in the order in Writ Petition No.5675 of 2016. He has also admitted that even when the previous auction notification, which was subject matter of Writ Petition No.5675 of 2016, was issued, the petitioner has not been dispossessed.

In the light of the above facts, learned counsel for respondent No.1 has undertaken that the petitioner will not be dispossessed physically unless and until the mortgaged property belonging to her was sold after following the procedure as indicated in the order in Writ Petition No.5675 of 2016.

These submissions of the learned counsel for respondent No.1 are placed on record and the Writ Petition is disposed of with the direction to respondent No.1 not to dispossess the petitioner from the mortgaged property in her possession till fresh auction is held by following the directions issued in the order in Writ Petition No.5675 of 2016.

As a sequel to disposal of the Writ Petition,
WPMP.No.41091 of 2016 filed by the petitioner for interim
relief is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

29th September 2016

DR

