

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

WRIT PETITION No.34365 of 2016

Between:

M/s. Vizg Company Steel,
Rep. by its Partner Mulukulla Yaswanth

PETITIONER

And

1. The Authorised Officer, Bank of Baroda, Main Branch, 30-10-33/2,
Sai Surya Complex, Daba Gardens, Visakhapatnam – 530 020 and
another.

RESPONSENTS



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

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

The petitioner has come up with the above writ petition challenging a demand under Section 13 (2) of the SARFAESI Act, 2002.

2. Heard Mr. K. Ramakanth Reddy, learned counsel for the petitioner and Mr. Srinivas Chitturu, learned counsel for the respondent Bank.

3. On 6.10.2016 a conditional order of stay was granted on the presumption that there was going to be an auction. The conditional order reads as follows:

“Notice before admission.

Learned counsel for the petitioner is also permitted to take out personal notice to respondents by registered post with acknowledgement due and file proof of service into Registry.

The main ground urged by learned counsel for the petitioner is that without issuing possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, the respondents are trying to sell the agricultural properties of the petitioner, which were mortgaged with the respondent bank.

It is the case of the petitioner that he paid an amount of Rs.5.00 crores and he is willing to pay some more amount out of total due amount of Rs.16,25,21,423.25 ps.

Having regard to the above, there shall be stay of auction for a period of four (04) weeks on condition of petitioner depositing a sum of Rs.4.00 crores within the said period.”

4. But today, the learned counsel for the bank submitted that even the possession notice under Section 13(4) has not been issued and hence the question of auction does not arise at this stage. Therefore, the writ petition is apparently premature.

5. Under the scheme of the Act, the borrower is supposed to give his objections to a demand under Section 13(2) of the Act. The Authorized Officer is obliged to pass an order under Section 13(3-A). It is

only thereafter that the possession notice under Section 13(4) can be issued. It is at that stage that a borrower gets a cause of action to go before the Debts Recovery Tribunal. That stage has not come.

6. According to the learned counsel for the petitioner a possession notice under Section 13(4) was pasted today on the notice board. If so, the petitioner should challenge the possession notice, and not the auction which is yet to be initiated by the respondent. Therefore, the writ petition is dismissed leaving it open to the petitioner to go before the Debts Recovery Tribunal and challenge the steps taken under Section 13(4). There shall be no order as to costs.

7. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

8th November, 2016
Js.



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Date: 08-11-2016

Js.