

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE R.KANTHA RAO**

W.P.No.14974 of 2016

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

The petitioner has come up with the above writ petition challenging an auction sale notice dated 10.4.2016 fixing the date of auction on 12.05.2016.

Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the 2nd respondent-Bank.

From the moment, the 2nd respondent granted a loan to the writ petitioner, all that the 2nd respondent got was only litigation before various High Courts, Tribunals, Supreme Court and could not recover any amount from the petitioner, as seen from the sequence of events that have happened in the past about 26 years from 1990. From 1996 to 2006, the petitioner was before the Board for Industrial and financial re-construction, thereafter before the appellate authority for industrial and financial re-construction and before the Courts. An attempt to recover the money by filing an application in O.A.No.4 of 2003 under Section 19 of The Recovery of Debts to Bank and Financial Institutions Act, 1993 has also

proved futile. A demand notice issued under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short ‘the SARFAESI Act’) way back in 2004 is also lingering in suspense for the past 12 years.

Eventually, the Debts Recovery Tribunal in an appeal filed by the petitioner in S.A.No.8 of 2014 passed an order on 6.1.2014, permitting the bank to proceed with the auction sale but not to confirm the same, until further orders. Thereafter, a further order was passed on 10.09.2014 directing the petitioner to furnish the bank guarantee. The operative portion of the order of the Debts Recovery Tribunal dated 10.9.2014 reads as follows:

“However, considering all the facts and the circumstances of the case, the submissions made by the Ld. Counsels on both sides, to afford an opportunity to the applicants to save their valuable property from being sold and also considering the contentions raised by both the parties with regard to legal and factual issues, which have to be dealt with and decided in the above SA after a thorough inquiry and also the undertaking given by the Ld. Counsel for the applicants that the applicants shall furnish a bank guarantee in favour of the respondent bank to the extent of the reserve price fixed for the schedule property by the respondent bank its sale notice dated 2.8.2014, the respondent bank is hereby permitted to proceed with the sale of the schedule property proposed to be held on 11.09.2014 in pursuance of the sale notice dated 02.08.2014.

However, at the same time the applicants are hereby directed to furnish a bank guarantee in favour of the respondent bank to the extent of the reserve price fixed for the sale of the schedule property by the respondent bank in its sale notice dated 2.8.2014 before confirmation of sale by the respondent bank, in which event the respondent bank is directed not to confirm the sale of the schedule property in favour of the highest bidder. Further, in the event the applicants fail to furnish such bank guarantee, as directed supra, the respondent Bank shall be at liberty to confirm the sale in favour of the highest bidder and such sale of the schedule property shall be result of the above SA.”

Admittedly, the said condition has also not been complied with by the writ petitioner. Therefore, frustrated at the series of litigation that this loan account brought to them, the 2nd respondent bank assigned the debt in favour of the 3rd respondent and the 3rd respondent, has now brought the property to sale. Looking at the sequence of events that have happened from 1990, we are of the considered view that the petitioner, having failed to comply with the series of all conditional orders, is not entitled to the luxury of protection against the sale.

Therefore, the Writ Petition is dismissed. It is left open to the petitioner to work out its remedies before the Debts Recovery Tribunal. No costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

JUSTICE V.RAMASUBRAMANIAN

JUSTICE R.KANTHA RAO

29th April, 2016
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