HON'BLE SRI JUSTICE R.KANTHA RAO
and
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P.No.14452 of 2016

ORDER: (*Per Hon'ble Dr. Justice B.Siva Sankara Rao***)**

The writ petitioner is the borrower, as defined under Section 2(1)(f) of the SARFAESI Act, 2002 (for short 'the Act'), having availed financial assistance from the respondent bank, as defined under Section 2(c) of the Act, for the default committed, the loan account was classified as non-performing asset, as per section 2(o) of the Act and the bank initiated securitization measures and after issuance of notice under Section 13(2) of the Act with 60 days time to liquidate for non-liquidation of the secured debt, the bank issued notice of taking possession of the secured asset under Section 13(4) of the Act, as part of the security measures for recovery of the debt.

It is the grievance of the petitioner that he also filed S.A.No.45 of 2015 under Section 13 (2) of the Act, not to conduct auction by the Bank for the immovable property. It is his further submission that while the SA is pending, the bank all of a sudden issued notice under Rule 8 (5 and 6) read with Rule 9 (1) of the securitization rules brining movables and immovable properties, without following the procedure as contemplated under Rule 4 and 5 of the Rules, by conducting any inventory and supplying of list and taking possession of the movable properties; whereas sale notice dated 30.3.2016 was issued to conduct e-auction on 02.05.2016 without description of the movable property, whereas in the first paragraph, it is mentioned as immovable properties, which is even the subject matter of SA No.45 of 2015 and thus the bank is not entitled to bring the property to sale, that too without following the procedure as contemplated by Rules 4 to 8 of the SARFAESI Rules and that impugning the same, he filed another SA

No.212 of 2016 and also filed an application for interim relief of stay of all further proceedings consequent to the e-auction notice dated 30.3.2016 supra. However, as there is no sitting of the Debt Recovery Tribunal (DRT) because there is no regular officer but the FAC Officer is coming from Kolkata only now and then and there is no likelihood of the sittings to conduct and hear the matter and in the mean time the interest of the petitioner is to be protected.

Heard the learned counsel for the petitioner at length and perused the material on record. Undisputedly, both the SAs are pending before the DRT with no interim order of stay of the securitization measures.

Having regard to the above, the writ petition is disposed of with the following equitable orders to sub-serve the ends of justice.

(1) As a protective measure to the petitioner, so as to enable him to pursue his remedies for any interim reliefs in the pending SAs before the DRT, two months time is granted with a direction to the Tribunal to dispose of the stay petition.

(2) There shall be meantime stay of conducting e-auction by the bank subject to the condition of the petitioner's payment of a sum of not less than Rs.7.5 crores on or before 15.06.2016.

(3) It is needless to say, if the petitioner failed to pay the amount as stipulated within the time supra, irrespective of the pending SAs, the bank is entitled to proceed with the conducting of e-auction by giving fresh e-auction notice and strictly in compliance with the statutory requirements and without further reference to the Court.

(4) There is no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R.KANTHA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

26th April, 2016
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