THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.7348 OF 2016

ORDER: (per Hon'ble Sri Justice Nooty Ramamohan Rao)

This writ petition is instituted challenging the notice of sale dated 04.02.2016 published by the respondent-Bank. Inspite of the petitioner herein availing the financial benefit from the respondent-Bank, failed to liquidate the liability in time, consequently, the loan account is declared as Non-performing Asset and hence the respondent-Bank initiated measures under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") by raising a demand notice under sub-section (2) thereof on 20.06.2015 demanding the outstanding liability of Rs.10,89,615/- to be liquidated within a period of two months. Since the petitioner has failed to deposit the same, the respondent-Bank has taken steps under sub-section (4) thereof by taking possession of the secured asset to liquidate that asset as a measure of realisation of the debt due, the present sale notice dated 04.02.2016 is drawn in accordance with the Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 proposing to sell the secured asset by way of e-Auction on 09.03.2016 between 1.00 p.m., and 2.00 p.m. It is this notice, which gave rise to the present *lis.*

2. It is not in dispute that the petitioner answers the description of the expression 'Borrower' as defined under Section 2(1)(f) of the SARFAESI Act and the respondent answers the

description of the expression ‘Bank’ as defined under Section 2(1)(c) of the SARFAESI Act. It would also be appropriate to notice that the mortgage created by the petitioner in favour of the respondent-Bank answers the description of the expression ‘Security Interest’ as defined under Section 2(1)(zf) of the SARFAESI Act. Since the SARFAESI Act has been ushered in to regulate the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, the action of the respondent-Bank in taking steps as provided for under Section 13 of the SARFAESI Act cannot be faulted. The action of the respondent-Bank is in accordance with the principles contained under Section 13 of the SARFAESI Act.

3. However, Sri Jagan, learned counsel for the petitioner would urge before us that the petitioner is, in fact, anxious to liquidate the liability completely. The petitioner seeks to demonstrate the bonafides by depositing a sum not less than Rs.2,00,000/- once in a fortnight commencing from today, as the total outstanding liability is in the order of an approximately Rs.12,00,000/- and hence in 6 fortnightly instalments, the entire liability can be cleared.

4. Accordingly, while we do not propose to interdict the sale of the secured asset by the respondent-Bank on 09.03.2016, we permit it to proceed further in the matter and also accept 25% of the bid amount from the best bidder, however, the respondent-Bank is directed not to confirm the sale in favour of the best bidder and not to execute any Sale Certificate in favour of such bidder, subject to the petitioner complying with the following conditions :

(i) The petitioner shall deposit a sum of not less than Rs.2,00,000/- (Rupees two lakhs only) every fortnightly to the loan account maintained with the respondent-Bank commencing from today;

(ii) If the petitioner commits any default in making the payment beyond two days of the limit set out supra, the respondent-Bank is at liberty to confirm the sale in favour of the best bidder without any further reference to this Court by accepting the balance 75% of the bid amount;

(iii) In case, the petitioner complies with the directions issued by this Court, it is needless for us to observe that the respondent-Bank cannot proceed any further pursuant to the auction conducted by it on 09.03.2016 and it is only liable to refund the amount deposited by the bidder together with permissible interest payable thereon and charge the same from the petitioner.

5. Subject to the above directions, this writ petition is disposed of. No order as to costs.

6. All miscellaneous petitions pending, if any, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

08.03.2016
Msr

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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08.03.2016
(Msr)