THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION NO.10402 OF 2016

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted by the petitioner seeking a writ of Mandamus for declaring the action of the respondent Nos.1 and 2 conducting the sale of schedule property on 04.03.2016 without considering request of the petitioner for payment of entire loan as bad in law and unsustainable.

However, in view of the order proposed to be passed by us now, there may not be any necessity to record the facts in great detail.

There is no dispute that the petitioner has availed certain financial assistance from the respondent – bank, which answers the description of bank as defined in Section 2 (1) (c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act'). The account has been declared as 'non-performing asset' because of failure to repay the debt as agreed on installment basis. Hence, the respondent - bank has taken measures of securitisation provided for under Section 13 of the Act. The demand notice has been raised under Sub-section (2) of Section 13 of the Act demanding payment of outstanding amount. Since that demand notice has not been honoured by the petitioner, the follow-up action under Sub-section (4) of Section 13 of the Act has been initiated and sold the schedule property. Be that as it may, learned counsel for the petitioner would inform the court that the bank has not issued any sale certificate in favour of the auction purchaser so far and the petitioner is very anxious to liquidate the liability. Hence, the respondent – bank is directed not to issue sale certificate in favour of the best bidder and also not to register the same as the petitioner is very anxious to liquidate his liability.

Subject to the writ petitioner liquidating the entire liability on or before 30.04.2016 the sale that was conducted on 04.03.2016 shall not be confirmed. If the petitioner commits any default, the respondent – bank is at liberty to proceed further in the matter, without any further reference to this Court, by executing the sale certificate in favour of the best bidder and register it and deliver vacant possession of the property. If the petitioner were to liquidate the entire liability by 30.04.2016, no further steps shall be taken except refunding the money deposited by the best bidder together with interest, if the terms of auction authorise and permit to do so and the interest shall not exceed 9% in that respect. The right of the petitioner to redeem his property, over which the mortgage has been created, subsists till the same is extinguished. The legal principle in this regard is very well settled and in case an authority is needed, all we need to do is to draw the attention of the respondent – bank to the judgment rendered by the Supreme Court in ***Mathuralal v. Keshar Bai and another***[1]***,*** in paragraphs 15 & 16, which is to the following effect:

> "15. ……………….So long as the mortgagor had a right to redeem the mortgage he can always pay off the mortgagee and get back possession. This position would continue so long as the property is not sold under a final decree for sale under the provisions of Order 34 C.P.C.
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> 16. In our opinion the second contention put forward on behalf of the appellant has no force. The rights of a mortgagee do not merge in his rights under the preliminary decree for sale. As already mentioned, the mortgagee lost his right to recover the money by sale of the mortgaged property; otherwise his security remained intact and the mortgagor continued to have his right to redeem the property."

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

30.03.2016

Note:
Issue C.C. by 31.03.2016
B/o
Ksp

[1] AIR 1971 SUPREME COURT 310