THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

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

WRIT PETITION NO.8608 OF 2016

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

The petitioners herein mounted a challenge to the E-auction – cum – sale notice taken out by the respondent – State Bank of Hyderabad proposing to dispose of 2 of the secured assets
(1) comprising a residential house bearing No.3-3-325 near Venkateshwara Kalyanmandapam, Gayathrinagar, Nizamabad while the other is open plot admeasuring 360 square yards situated at Dwarakanagar, Nizamabad.

In view of the order proposed to be passed by us, it may not be really necessary to advert to all the facts in detail. It would be sufficient to notice that the respondent – bank has accorded certain financial assistance to the petitioner Nos.2 and 4 – firms. Incidentally, the petitioner No.2 - firm is represented by its proprietor, the 1st petitioner while the petitioner No.4 – firm was represented by its proprietor, the 3rd petitioner. Further, the petitioners No.1 and 3 are the brothers. The 5th petitioner is their mother. Since the borrowers have committed default in liquidating their liability to the satisfaction of the respondent – bank and also did not respond to the notice of demand issued by the respondent – bank under Sub-Section 2 of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act'), the follow-up measures of Securitisation of the loan/debt due have been initiated by the respondent – bank under Sub-Section 4 of Section 13 of the Act, which empowered among others to take possession, manage, lease it out or transfer by way of sale of any such secured asset for purpose of realising the debt due. One of the contentions that was canvassed before us by the learned counsel for the petitioners is that the open plot comprising of 360 Sq.yards situated at Dwarakanagar, Nizamabad was assessed to be of the value of Rs.1.80 lakhs, hence the reserve price has been fixed for the said property at Rs.1.80 lakhs. Whereas for the residential house, which is constructed in approximately 297 Sq.yards, the reserve price is fixed at Rs.31,00,000/-. It is stated that the outstanding liability as on 14.10.2015 is only Rs.40,36,581/-. Perhaps, this amount of liability may have swollen by few lakhs more due to addition of the interest to be calculated beyond 14.10.2015 and the securitisation expenses to be added to it. Be that as it may, we mooted with the learned standing counsel for the respondent – bank as to whether the bank can put to sale one property at a time instead of putting to sale both the properties. Sri E.Madan Mohan Rao, learned standing counsel, secured detailed instructions in the matter and apart from demonstrating as to how the writ petition lacks merit, has rightly drawn our attention to the proposed date of E-auction sale. So far as the 2nd property comprising of 360 Sq.yards, open site is concerned, it is sought to be sold on 22.03.2016 at 02.00 p.m. whereas the 1st property comprising of a residential house is sought to be sold with a gap of 2 days i.e. on 24.03.2016 at 02.00 p.m. Thus, we now realised, that the bank is proceeding using all conservative methods to enable the principal borrower to liquidate the liability completely by sale of one asset, if possible. For instance, if the open plot is sold for any amount upwards Rs.1.80 crores, then the necessity to put any other property to sale would not arise. Only in the event that the bank finds that the bids received for the property comprising of open plot are not encouraging, then perhaps, the house property will have to be necessarily put to sale.

In this view of the matter, we do not find any infirmity either legal or otherwise in the action initiated by the respondent – bank in the matter as the petitioners continue to answer the description of 'borrower' as defined in Section 2 (1) (f) of the Act and the security interest which they created over immovable property made the said property as secured asset in terms of definition contained in Section 2 (1) (zc), which was given a very expansive definition.

In that view of the matter, there is no necessity for us to pass any order except to observe that in case the open plot itself is sold for Rs.1.80 crores or more than that, perhaps, the respondent – bank may not put the house property to sale or at least it may not confirm the sale in favour of the best bidder till such time, the sale transaction with regard to the open plot gets completed. The writ petition is merit less and it is dismissed. No costs.

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

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

18.03.2016

Note:
Issue C.C. by 21.03.2016
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