THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

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

WRIT PETITION No.3963 of 2016

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

This writ petition has been filed by the petitioner seeking Writ of Mandamus for declaring the action of the respondent/State Bank of India, Main Branch, Adoni, Kurnool District, in issuing the auction/sale notice dated 08.01.2016 proposing to conduct the auction on 17.02.2016 in respect of House property bearing No.2/360, Plot No.87 in survey No.445 admeasuring 366 2/3 square yards situated at Sadapuram Village, Adoni, Kurnool District as illegal.

The case of the petitioner is that in the year 2005, the petitioner has availed certain financial benefits in a sum of Rs.8,50,000/- by mortgaging the house property bearing No.2/360, Plot No.87 in survey No.445 admeasuring 366 2/3 square yards situated at Sadapuram Village, Adoni, Kurnool District. There is no dispute on the count that there was default in clearing the outstanding liability with regard to this mortgage loan. The petitioner would also submit that apart from this mortgage loan, he has also availed car loan in a sum of Rs.4,50,000/- and a personal loan in a sum of Rs.1,50,000/-. The petitioner would also submit that his wife also availed similar financial assistance towards a house loan in a sum of Rs.9,60,000/-, a computer loan for a sum of Rs.40,000/-, Saral loan in a further sum of Rs.40,000/- and personal loan in a further sum of Rs.1,00,000/- and thus, he is in a relationship with the respondent/Bank over a long period of time and spread over several loan accounts.

It appears the Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') for realisation of outstanding liability. In the meantime, on the pretext that the proposal of the petitioner for one time settlement of loan accounts has not been processed, the petitioner instituted W.P.No.39481 of 2014. By an order passed on 22.01.2015, this Court directed the Regional Manager, State Bank of India, Anantapur, to examine the request of the petitioner for one time settlement and take a final decision in that regard. On 24.01.2015, the petitioner and his wife made a detailed representation proposing to liquidate the outstanding liability under one time settlement scheme. On 19.02.2015, the State Bank of India, Adoni Main Branch, Kurnool District, had informed the petitioner herein that in his mortgage loan account bearing No.10626442956, which was sanctioned on 26.04.2005, the outstanding liability as on 28.01.2015 was Rs.32,26,468/-. In his car loan account bearing No.10626442945, which was sanctioned on 31.12.2004, the outstanding liability as on 28.01.2015 was Rs.6,18,956/-. The petitioner and his wife have proposed through their representation dated 21.02.2015 to pay a sum of Rs.30,87,500/- under the one time settlement scheme. That was not accepted by the Bank. Hence, the Bank has taken the proceedings under Section 14 of the SARFAESI Act by approaching the competent authority. At that stage, the petitioner and his wife approached this Court by instituting W.P.No.27525 of 2015. That writ petition was disposed of by a Division Bench on 01.09.2015 directing the petitioners to deposit a sum of Rs.25,00,000/- within a period of four weeks and in such event, the Bank shall not finalise the sale of the secured asset. However, this Court has pointed out that if the petitioners fail to deposit the amount, it is open to the respondent to take further steps in accordance with law. As usual the petitioners have failed to live up to the direction issued by this Court. A further sum of Rs.25,00,000/- appears to have been paid on 3 different dates. In the loan account bearing No.20164888476 a sum of Rs.5,00,000/- was deposited on 30.09.2015 and into the same account, a further sum of Rs.10,00,000/- appears to have been deposited on 06.02.2016 after a gap of more than 4 months from the 1st payment of Rs.5,00,000/-. Into another account bearing No.10626287444 a sum of Rs.10,00,000/- was deposited on 05.02.2016. But, however, these are the loan account of the wife of the petitioner herein. It is, thus, clear that the two loan accounts, one mortgage loan and another car loan account bearing Nos.10626442956, 10626442945 belonging to the petitioner herein have not been credited with any money, as directed by this Court.

On behalf of Sri K.Viswanatha Reddy, learned counsel for the respondent/Bank, Smt. K.Leela Reddy, learned counsel, brought to our notice that the petitioner has not paid any amount towards the outstanding loan liability.

Now the respondent/Bank has proceeded further to dispose of the secured asset by way of sale by way of auction on 17.02.2016.

Heard Sri Vijaya Bhasker, learned counsel for the petitioner. Learned counsel would submit that the petitioner is ready and willing to liquidate his outstanding liabilities provided some time is granted to the petitioner.

SARFAESI Act is a special piece of legislation ushered in by the Parliament for securing the interest of the financial institutions. When once financial institutions lend money, they are entitled to recover the same in quick time, so that they can extend similar credit facilities to other customers. As a part of business proposition, recovery of money lent is highly essential, otherwise, the debt becomes a Non Performing Asset and consequently, the vitals of the lending institutions will get stressed and strained.

In these set of circumstances, since the petitioner has not lived up to the directions issued by this Court in W.P.No.27525 of 2015, which was disposed of on 01.09.2015, we are helpless. While granting liberty to the respondent/Bank to proceed further and liquidate the secured asset by way of public auction and the proceeds so realised be applied to the loan account for which the secured asset has been mortgaged. But, however, before any such sale is confirmed in favour of the highest/best bidder(s), if the petitioner deposits the entire outstanding loan amount, the respondent/Bank may exercise necessary discretion in favour of the petitioner by not confirming the said sale. If, for any reason, the petitioner fails to pay the outstanding liability before the sale is to be confirmed in favour of the best bidder, it will be open to the respondent/Bank to confirm the sale and deliver possession thereof to the best bidder by applying the sale proceeds for liquidating the outstanding loan liability concerned.

With this observation, this writ petition stands disposed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

17.02.2016
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