

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No. 1766 of 2017

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

This writ petition was filed with the following prayer:

“It is therefore prayed that this Hon'ble Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of mandamus set aside the impugned auction notices dated 27.12.2016, 13.1.2017 fixing the auction on 20.1.2017 for two buses bearing Nos. TS 16 U 6471 and TS 16 U 6470 of the respondent bank by declaring the same as illegal, arbitrary, capricious and not permissible under any law and without jurisdiction and consequently direct the respondent bank to release the two buses of the petitioner by receiving the overdue amounts if any and pass such other order or orders in the interest of justice.”

Being under the impression that the action initiated by the State Bank of Hyderabad, the respondent herein, was under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), this Court opined that the sale notice dated 27.12.2016 issued by the Bank was contrary to Rule 6(2) of the Security Interest (Enforcement) Rules, 2002, and accordingly directed the Bank not to confirm the sale or deliver possession of the vehicles to the auction purchaser. This order was passed on 19.01.2017 and was operative for a period of four weeks from that day. Significantly, there was no extension of the said order thereafter.

W.V.M.P.No.706 of 2017 was filed by the Bank to vacate the aforestated order. By the date of filing of the said petition, the interim order was still subsisting but expired thereafter due to efflux of time.

In the affidavit filed in support of the vacate stay petition, the Bank categorically stated that the action initiated by it to bring to sale the vehicles of the petitioner was not under the provisions of the SARFAESI Act but in terms of the hypothecation agreement whereby the said vehicles were hypothecated to it by the petitioner.

That being so, the challenge levelled by the petitioner treating the action initiated by the Bank as one under the provisions of the SARFAESI Act does not merit consideration.

The writ petition is accordingly dismissed on this short ground. It is made clear that the interim order dated 19.01.2017 is no longer in operation. This order shall however not preclude the petitioner from approaching the Bank with any proposal that it may have for settlement of its dues.

Pending Miscellaneous Petitions shall also stand dismissed. No order as to costs.

Date: 24.07.2017

JUSTICE SANJAY KUMAR

JUSTICE GUDI SEVA SHYAM PRASAD

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