THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Petition Nos.663 and 12651 of 2017

COMMON ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The petitioner claims to be the tenant of the subject premises. Questioning the action of the respondent-bank, in putting the subject property to auction, he filed W.P.No.37843 of 2015; and pursuant to an interim order granted by this Court, directing him to deposit Rs.10,00,000/- as a condition for grant of stay of dispossession, he paid Rs.10,00,000/- to the respondent-bank. The said writ petition was dismissed for non-prosecution by order dated 13.07.2016.

After W.P.No.37843 of 2015 was dismissed, the respondent-bank again put the subject property to auction, questioning which the petitioner filed W.P.No.663 of 2017 and, by order dated 05.01.2017, a Division Bench of this Court observed that, since the question regarding Rs.10,00,000/- deposited by the petitioner loomed large, there should be a limited interim order protecting his possession. Thereafter, proceedings were instituted by the respondent-bank under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), and possession of the subject property was taken. Questioning the action taken by the respondent-bank, in initiating proceedings before the Court of the Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, Kurnool, and the order in Crl.M.P.No.5 of 2017 dated 09.02.2017 as having been passed without giving due credence to the orders of this Court in W.P.No.663 of 2017 dated 05.01.2017, the petitioner filed W.P.No.12651 of 2017;

and the said writ petition is also listed before us today along with W.P.No.663 of 2017.

Sri A.Krishnam Raju, learned Standing Counsel for the respondent-Bank, would submit that the subject property was auctioned in October, 2016; the highest bidder offered to pay Rs.64.19 lakhs; on the entire amount being paid, a sale certificate was issued in his favour; since the petitioner continued to remain in possession of the subject property, the respondent-bank initiated proceedings in terms of Section 14 of the SARFAESI Act; and pursuant to the order passed by the Chief Judicial Magistrate, in Crl.M.P.No.5 of 2017 dated 09.02.2017, possession of the subject property was taken from the petitioner questioning which W.P.No.12651 of 2017 was filed by him on 07.04.2017.

As the petitioner was dispossessed, in violation of the order passed by this Court in W.P.No.663 of 2017 dated 05.01.2017, Sri A.Krishnam Raju, learned Standing Counsel for the respondent-Bank, would fairly state that the respondent-bank expresses its regret for forcibly dispossessing the petitioner; the bank would now put the petitioner bank in possession; they would now refund the Rs.10,00,000/- paid by him earlier; and this Court may permit the respondent-bank to enforce the order, passed earlier under Section 14 of the Act, within a specified time frame.

While fairly stating that no registered lease deed has been executed in favour of the petitioner, Sri I.Rama Rao, learned counsel for the petitioner, would contend that a copy of the un-registered sale deed would show that the petitioner was put in possession of the subject property; and the petitioner is ready and willing to pay the highest bid of Rs.64.19 lakhs within three days from today, if the respondent-bank is willing to hand over the subject property to him.

Sri A.Krishnam Raju, learned Standing Counsel for the respondent-bank expresses the inability of the respondent-bank to do so, as a sale certificate has already been issued to the highest bidder as early as on 16.12.2016; and in terms of Section 13(8) of the SARFAESI Act, even the owner is not entitled to redeem the mortgaged property after the date of publication of the notice for public auction, or inviting tenders from the public.

Section 17(1) of the SARFAESI Act, amended by Act 44 of 2016 with effect from 01.09.2016, enables any person aggrieved by any of the measures taken by the bank under Section 13(4) of the Act to approach the Debt Recovery Tribunal. We see no reason, therefore, to examine the contentions raised in these writ petitions on its merits.

As the respondent-bank admits having violated the interim order of this Court, they shall put the petitioner back in possession within one week from today. It is open to the petitioner to move the Debt Recovery Tribunal within four weeks from today. It is also open to the respondent-bank, any time after four weeks from today, to enforce the warrant issued under Section 14 of the Act, in case no order is passed by the Debt Recovery Tribunal in the interregnum.

Both the Writ Petitions are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

18th April, 2017
Note: Issue C.C. tomorrow.
JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Petition Nos.663 and 12651 of 2017

Date: 18.04.2017

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