

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO**

WRIT PETITION No.32358 OF 2017

ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The jurisdiction of this Court is invoked questioning the action of the respondent, in issuing notices under Rules 8(6) and 9(1) of Security Interest (Enforcement) Rules, 2002 on 10.08.2017, for e-auction of the petitioner's residential property. Questioning the very same notice dated 10.08.2017, the petitioner invoked the jurisdiction of the Debts Recovery Tribunal-II, Hyderabad (DRT) earlier in SAIR.No.206 of 2017 and, by order dated 15.09.2017, the DRT granted interim stay of all further proceedings, including dispossession and the e-auction proposed on 18.09.2017 pursuant to the e-auction sale notice dated 10.08.2017 issued by the respondent-bank, subject to the petitioner depositing 30% of the total outstanding dues, as claimed in the e-auction sale notice, in two instalments, the first instalment of 15% to be deposited before the auction scheduled to be held on 18.09.2017, and the second instalment of 15% within two weeks thereafter. The DRT made it clear that, in the event of failure to comply with any of the aforesaid directions, the interim stay would stand vacated; and the respondent bank was at liberty to proceed with the auction in accordance with law.

Sri Ravi Kumar, learned counsel for the petitioner, would submit that, while only 3 days time was granted for payment of the first instalment i.e., from 15.09.2017 till 18.09.2017, the petitioner could not comply with the aforesaid direction of the DRT as 16th and 17th were bank holidays. When we asked Sri Ravi Kumar,

learned counsel, whether the petitioner has even paid the said 15% thereafter, learned counsel would submit that the petitioner has yet to collect his dues from others living in Addisababa in Ethiopia, and he needs time till then to make payment. The order of the Tribunal required the second instalment to be paid by 03.10.2017 i.e. today. Admittedly not even a single rupee has been paid, pursuant to the order passed by the DRT, till date. In any event, the petitioner has effective alternative remedy of an appeal to the appellate authority under the SARFAESI Act against the order passed by the DRT. We see no reason, therefore, to exercise discretion, under Article 226 of the Constitution of India, to interfere.

The writ petition fails and is, accordingly, dismissed. Suffice it to make it clear that this order shall not disable the petitioner to avail the alternative appellate remedy available to them under the SARFAESI Act. Miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ

3rd OCTOBER, 2017.

M. GANGA RAO, J

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