

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Petition Nos.16629 and 32620 of 2016

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

The petitioner is common in both the writ petitions. Heard Sri P. Prabhakara Rao and Sri Ch. Ramesh Babu, learned counsel appearing on behalf of the petitioner, and Sri S. Ashok Anand Kumar, learned counsel appearing on behalf of the respondent-Bank and, with their consent, the writ petitions are disposed of at the stage of admission.

W.P.No.16629 of 2016 was filed to declare the order passed by the Debt Recovery Tribunal, in I.A.No.249 of 2016 in S.A.No.115 of 2016 dated 13.05.2016, disposing of S.A. No.115 of 2016 itself without considering the same on merits, and in directing the petitioner to pay Rs.1,00,00,000/- and submit a concrete proposal to pay the entire dues within one month, as illegal and arbitrary. By an interlocutory order, passed in W.P.M.P.No.20504 of 2016 in W.P.No.16629 of 2016, this Court granted stay of confirmation of the sale scheduled to be held on 03.06.2016 subject to the petitioner depositing Rs.1,00,00,000/- on or before 02.07.2016.

While the petitioner is said to have complied with the interim order, and to have deposited Rs.1,00,00,000/- before 02.07.2016, the respondent-Bank appears to have issued a fresh auction notice on the ground that there were no bidders in the earlier auction. The auction notice dated 22.08.2016 stipulated that the auction shall be held on 05.10.2016. The validity of this auction notice was questioned in W.P.No.32620 of 2016 and, by an interim order dated 27.09.2016, this Court granted stay of all further action in pursuance of the impugned sale notice dated 22.08.2016.

The grievance of the petitioner, as put forth both by Sri P.Prabhakara Rao and Sri Ch.Ramesh Babu, learned counsel appearing on behalf of the petitioner, is that the Debt Recovery Tribunal lacks jurisdiction to dispose of S.A.No.115 of 2016 itself, though it is only I.A.No.249 of 2016 which was slated for hearing; no discretion is conferred on the DRT to decide whether or not an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) should be entertained; and, as a statutory remedy is prescribed, the DRT lacks jurisdiction to refuse to entertain the application filed under Section 17 or to dismiss it at the threshold.

In its order, in I.A.No.249 of 2016 in S.A.No.115 of 2016 dated 13.05.2016, the DRT has noted that the learned counsel for the respondent undertook to file vakalat. It noted the submission of both the learned counsel for the applicant and the respondent and, thereafter, passed the following order.

- i. I direct the Applicant to pay Rs.1 crore on or before the date of sale i.e 30.06.2016.
- ii. Subject payment of Rs.1 crore on or before the date of sale, Respondent Bank is directed to defer/stay the sale to be held on 03.06.2016.
- iii. In case Applicant fails to pay Rs.1 crore on or before the date of sale, Respondent Bank shall be at liberty to go ahead with the sale as per schedule.
- iv. Applicant is directed to submit a concrete proposal and to pay entire dues within one month after the date of sale latest by 10.07.2016.
In case the entire dues are not paid within the above said period or within the period as allowed by the Respondent Bank, Respondent Bank shall be at liberty to proceed further as per Rules.

After issuing the said directions, the Debt Recovery Tribunal observed that there remained nothing to be adjudicated and, consequently, disposed of both S.A.No.115 of 2016 and I.A.No.249 of 2016.

As it is submitted on behalf of the petitioner, that several other contentions have also been raised in the Section 17 proceedings, and as it does appear that what was slated for hearing before the DRT was only

I.A.No.249 of 2016, it does appear that the DRT had erred in dismissing S.A.No.115 of 2016 itself. As the remedy of filing an application under Section 17 of the SARFAESI Act is a statutorily prescribed remedy, the petitioner's right to have their application under Section 17 of the SARFAESI Act adjudicated, after a counter affidavit is filed by the respondents, has been denied by the order impugned in W.P.No.16629 of 2016. While the Tribunal may well have been entitled to dispose of the I.A, we are satisfied that S.A.No.115 of 2016 could not have itself been disposed of along with the I.A.

The impugned order dated 13.05.2016 is set aside to the limited extent S.A.No.115 of 2016 was dismissed. S.A.No.115 of 2016 shall stand restored to file, and shall be adjudicated by the DRT on its merits. We make it clear that we have not interfered with the interlocutory order passed by the DRT in I.A.No.249 of 2016 in S.A.No.115 of 2016.

Both the Writ Petitions are disposed of accordingly. 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)

22nd February, 2017
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Date: 22.02.2017

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