

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1541 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.25797 of 2017 dated 04.10.2017. The 1st respondent herein filed the writ petition to declare the action of the respondents therein in not receiving the due instalment amounts, and in not regularising his loan account with respect of vehicle bearing No.TS 08 EK 1249, and in issuing notice under Rule 8(6) of the Secured Interest (Enforcement) Rules dated 04.05.2017, as illegal and arbitrary.

By way of an interim order, in WPMP.No.31998 of 2017 in WP.No.25797 of 2017 dated 03.08.2017, the Learned Single Judge directed that the auction may go on, but the same may not be finalised; and there shall be stay of all further proceedings subject to the 1st respondent-writ petitioner depositing Rs.5,00,000/- within ten days from the date of the order. Thereafter, by order in W.P.No.25797 of 2017 dated 04.10.2017, the Learned Single Judge, after having noted that the 1st respondent-writ petitioner had already paid Rs.5,00,000/-, recorded the submission of the learned counsel for the 1st respondent-writ petitioner that he was ready and willing to pay Rs.2,00,000/- per month.

The Learned Single Judge granted interim stay of all further proceedings subject to the condition that the 1st respondent-writ petitioner deposits Rs.2,00,000/- on or before 13.10.2017 and the seized vehicle shall be released in his favour; the 1st respondent-writ petitioner shall continue to deposit Rs.2,00,000/- on or before the 13th of every succeeding month; and, in default, the interim stay shall stand dissolved without further recourse to the Court. The Learned

Single Judge further directed the 1st respondent-writ petitioner not to encumber, transfer or create third party interest in favour of third parties.

Sri P.Hari Prasad, learned counsel for the appellant-Bank (1st respondent in the writ petition), would submit that, since the order under appeal dated 04.10.2017 was passed after the Bank had filed a vacate stay petition in WVMP.No.3877 of 2017 on 15.09.2017, the appellant does not have any other remedy except to invoke the jurisdiction of this Court under Clause 15 of the Letters Patent; as the 1st respondent-writ petitioner had defaulted in payment of three instalments, his account was declared a Non Performing Asset; proceedings were initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the property was put to auction; the highest bidder in the auction has paid 25% of the sale consideration of Rs.19.25 lacs; and it is only because of the interim order passed by the Learned Single Judge, that the property could not be sold to the highest bidder in the auction for realisation of the debt due to the appellant-Bank.

On the other hand, Sri B.Shiva Kumar, learned counsel for the 1st respondent-writ petitioner, would submit that the order under appeal is an interim order; no orders have been passed in the vacate stay petition; and, instead of pursuing the vacate stay petition, the appellant herein had invoked the jurisdiction of this Court under Clause 15 of the Letters Patent.

While it does appear that the order under appeal was passed on 04.10.2017, after the appellant herein filed WVMP.No.3877 of 2017 on 15.09.2017, the order under appeal was passed in the writ petition, and not in the petition seeking vacation of the earlier interim order. Further, the order under appeal itself records that there shall be interim stay of all further proceedings, meaning thereby that the

earlier interim order has only been varied and the interim stay granted earlier has not been made absolute.

We find considerable force in the submission of Sri P. Hari Prasad, learned counsel for the appellant, that this Court, in proceedings under Article 226 of the Constitution of India, would, ordinarily, not regulate the mode and manner of repayment of the debt due to banks or fix instalments for repayment of the debt due, as these are all matters for the Bank to decide, and not for this Court to direct in proceedings under Article 226 of the Constitution of India.

We, however, refrain from making any observations on the merits of the contentions urged before us, since Sri B.Shiva Kumar, learned counsel for the 1st respondent-writ petitioner, himself agrees that the vacate stay petition is still pending before the Learned Single Judge; and the remedy of the appellant is to pursue the vacate stay petition, and not to prefer an appeal against an interim order. In as much as it is not in dispute that the vacate stay petition, filed by the appellant, is still pending consideration before the Learned Single Judge, we see no reason to exercise discretion to entertain this appeal under Clause 15 of the Letters Patent, as the appellant can as well seek vacation of the interim order in WVMP.No.3877 of 2017 filed by them. Suffice it, while dismissing the writ petition, to make it clear that the appellant's application to vacate stay shall be considered on its merits and in accordance with law.

Subject to the above observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

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



Writ Appeal No.1541 of 2017

Date: 23.10.2017

JSU