THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 813 OF 2018

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

The Indian Bank, the respondent in S.A.No.319 of 2017 on the file of the Debts Recovery Tribunal, Visakhapatnam, filed this writ petition aggrieved by the order dated 20.11.2017 passed by the Tribunal in I.A.No.1422 of 2017 filed therein. By the said order, the Tribunal disposed of the I.A. directing the Indian Bank to maintain *status quo* till disposal of the main securitization application.

Notice having been served upon M/s. VMS Ferro Alloys Private Limited, Tadepalli, Guntur District, the respondent herein, the applicant in S.A.No.319 of 2017, by Sri Ambadipudi Satyanarayana, learned counsel for the petitioner Bank, by registered post with acknowledgement due pursuant to the permission granted by this Court, the said respondent concern did not choose to enter appearance before this Court.

Sri Ambadipudi Satyanarayana, learned counsel, would point out that the prayer of the respondent herein in I.A.No.1422 of 2017 in S.A.No.319 of 2017 was to grant stay of the proceedings initiated by the Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act, 2002") regarding the schedule mentioned properties in pursuance of the e-auction sale notice dated 08.09.2017 published in Indian Express daily newspaper on 09.09.2017 pending the S.A. Learned counsel would further state that though the sale was held pursuant to the aforestated e-auction sale notice dated 08.09.2017 on 27.09.2017, there was some communication gap in bringing this fact to the notice of the Tribunal and an order of *status quo* was passed by the Tribunal on 27.09.2017.

Unaware of the same, the bank proceeded on the strength of the sale held on the said day. This aspect of the matter was brought to the notice of the Tribunal and ultimately, the Tribunal opined that it was on the representation made by the counsel for the Bank that the sale was not held on 27.09.2017 and that the auction was withdrawn, the Tribunal had ordered *status quo* to be maintained and accordingly observed that the said *status quo* orders should be extended till disposal of the case. In consequence, the Tribunal directed the Bank to maintain *status quo* till disposal of S.A.No.318 of 2017.

Sri Ambadipudi Satyanarayana, learned counsel, would inform this Court that in the light of the complications revolving around the sale held on 27.09.2017 due to the aforestated lapses on the part of the Bank in informing the Tribunal of the correct facts, a decision has been taken by the Bank to cancel the said sale. He would however point out that by virtue of the *status quo* order granted by the Tribunal pending the disposal of the securitization application, the Bank is now pre-empted from taking fresh measures under Section 13(4) of the SARFAESI Act, 2002.

We find merit in this submission as the grievance urged by the respondent/applicant concern before the Tribunal was only in the context of the e-auction notice dated 08.09.2017. As the sale which resulted therefrom on 27.09.2017 is now proposed to be cancelled by the Bank itself, the cause in the I.A. does not survive. The question of granting an order of *status quo* pending the disposal of the S.A. did not arise at all being far in excess of the prayer in the said I.A. Significantly, the main prayer in the S.A. also relates only to the said e-auction notice dated 08.09.2017 and reads as under:

> "In view of the facts mentioned in para 5 of the above, the applicant therefore pray that this Honourable Tribunal be pleased to:
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> (i) Set aside the actions of the respondents in pursuance of the e-auction notice dated 08.09.2017 which is published in The New Indian Express

> Newspaper on 09.09.2017 under Section 13(4) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act regarding the schedule mentioned properties.
>
> (ii) Declare that the initiations taken by the respondents 1 and 2 is against to the laid down procedure under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and the same are illegal, void and arbitrary in respect of the e-auction notice dated 08.09.2017."

As the Indian Bank has now decided to cancel the e-auction sale held on 27.09.2017 pursuant to the impugned e-auction sale notice dated 08.09.2017, the main S.A. itself may not survive for consideration. This aspect of the matter would have to be considered by the Tribunal. In any event, interdicting the Indian Bank from taking measures afresh by way of the *status quo* order dated 20.11.2017 cannot be countenanced once the impugned e-auction notice dated 08.09.2017 and the resultant sale held on 27.09.2017 come to naught by virtue of the decision of the Bank to cancel the same.

The writ petition is accordingly allowed setting aside the order dated 20.11.2017 in I.A.No.1422 of 2017 in S.A.No.319 of 2017 on the file of the Debts Recovery Tribunal, Visakhapatnam. The petitioner/Indian Bank is at liberty to initiate measures afresh under Section 13(4) of the SARFAESI Act, 2002, in accordance with due procedure. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

SANJAY KUMAR, J

P. KESHAVA RAO, J

Date: 30.01.2018
ES/CCM