

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.11183 OF 2018

Date:26.04.2018

Between:

M/s. Ganesh Silks, Secunderabad,
Rep. by its Proprietor M. Santosh Kumar

...Petitioners

Vs.

Vijaya Bank, Rep.by its Authorized Officer,
Babukhan, Estate, Basheerbagh, Hyderabad and another.

.. Respondents

For Petitioners : Mr.Meherchand Noori

For Respondents : Mr.E.Madan Mohan Rao

Gist :

Head Note :

Cases Referred : Nil



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.11183 OF 2018

ORDER: (per V. Ramasubramanian, J)

The petitioner has come up with the above writ petition challenging an order passed by the Debts Recovery Tribunal dismissing an application for extension of time to comply with the conditional order on the ground that it has become infructuous.

2. Heard Mr.Meherchand Noori, learned counsel for the petitioner and Mr.E.Madan Mohan Rao, learned Counsel for the respondent 1st respondent Bank.

3. As against an auction sale notice, the petitioner filed SA No.46 of 2018 on the file of the Debts Recovery Tribunal along with an application in I.A. No.493 of 2018 for stay of further proceedings. The Tribunal granted a conditional order of stay, which if extracted would be self explanatory. Hence, it is extracted as follows:

"Accordingly, the Respondent Bank may go ahead with the sale of the petition schedule property as scheduled on 22.02.2018 but not to confirm the sale in favour of the highest bidder in the auction sale of the above petition schedule property in pursuance of the Sale Notice dt.30.01.2018 subject to the Petitioner depositing Rs.20 lakhs, in two equal instalments - first instalment of Rs.10 lakhs is directed to be deposited on or before the date of auction i.e. on 22.02.2018 and the second instalment of Rs.10 lakhs within 2 weeks thereafter, directly with the Respondent Bank. In the event of failure of compliance of any of the above conditions by the Petitioner/Applicant, the interim stay shall stand vacated and the Respondent bank shall be at liberty to confirm the sale in favour of the highest bidder and proceed further in accordance with law."

4. The petitioner did not pay the first instalment within the period stipulated in the conditional order. According to the petitioner, he took a Demand Draft for the entire amount on 03.03.2018 and attempted to pay the same to the Bank, with a contention that the whole payment is made before expiry of the ultimate time granted by the Tribunal.

5. In the meantime, the Bank proceeded with the auction. The petitioner immediately filed an application for extension of time narrating all these facts. When the application came up for hearing, the Bank raised a contention that everything is concluded. Therefore, the application for extension of time was dismissed as infructuous. As against the said order, the petitioner is before us.

6. The fact remains that the sale was conducted, it was confirmed and a sale certificate was issued. Therefore, there is no point in finding out in this writ petition as to whether the application for extension of time had become infructuous or not. Since the main appeal against the auction sale notice is pending before the Tribunal in S.A. No.46 of 2018, the petitioner can raise all issues, arising both before the conduct of the auction and after the conduct of the auction and also raising a point that the conduct of the auction when he was attempting to comply with the conditional order was improper.

7. Therefore, the writ petition is closed, leaving it open to the petitioner to raise all these issues along with other issues for assailing the auction in the same appeal pending before the Tribunal. The question whether the request for extension of time had actually become infructuous or not can also be considered by the Tribunal at the time of hearing.

8. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

April 26, 2018

Note:

Furnish CC by 30.04.2018.
B/o.KTL