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

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.30425 of 2017

Between:

M.V. Govinda Rao, S/o M. Ramarao, aged 54 years, Occ: Business, R/o H.No.16-31-IX, M II-50, MIG-II, Phase-IX, KPHB Colony, Hyderabad

… Petitioner

Vs.

State Bank of India, represented by its Assistant General Manager & Authorised Officer, Stressed Assets Management Branch-II, H.No.3-4-1013/A, 1st floor, TSRTC Kachiguda Community Amenity Centre, Kachiguda, Hyderabad and another

… Respondents

Counsel for the Petitioner : Mr. K. Chidambaram

Counsel for Respondents : Mr. B.S. Prasad

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

<u>Writ Petition No.30425 of 2017</u>

<u>ORDER</u>: *(per V. Ramasubramanaian, J)*

Aggrieved by the conditional order passed by the Debts Recovery Tribunal-II, Hyderabad, the petitioner, who is one of the guarantors, has come up with the above writ petition.

2. When the writ petition came up for hearing, an interim order was passed on 22-09-2017, which reads as follows:

> *"Sri D.V.N. Acharya, learned counsel for the petitioner, states that, as against the highest bid received by the petitioner is ready and willing to deposit Rs.1.20 crores by 2509.2017; and the respondent-bank be restrained from executing a sale deed in favour of the successful bidder in the auction, on the petitioner paying the said sum of Rs.1.20 crores.*
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> *Sri B.S. Prasad, learned counsel for the respondent-bank, states that the highest bidder, in the auction held on 7.9.2017, has offered Rs.1.19 crores; he paid 25% immediately, and the balance 75% on 21.9.2017; a Sale Certificate has been issued in favour of the highest bidder; the only formality required to be completed is for execution of a registered sale deed; and there are no bonafides in the writ petition.*
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> *As the petitioner seeks to save his property, and as no sale deed has as yet been executed, the respondent-bank is directed, in case the petitioner pays the entire amount of Rs.1.20 crores by Monday i.e. 25.9.2017, not to execute a registered sale deed in favour of the highest bidder in the auction. If the petitioner fails to pay the entire amount of Rs.1.20 crores by Monday i.e. 25.9.2017, in accordance with the undertaking given to this court, by Sri D.V.N. Acharya, learned counsel for the petitioner, it is open to the respondent-bank to execute and register the sale deed in favour of the highest bidder in the auction any day after 25.9.2017.*

3. Pursuant to the said order, the petitioner deposited the entire amount.

4. The matter thereafter came up on 20-04-2018. The petitioner complained to this court that his property was not released

from mortgage and the amount paid pursuant to the interim order, was also retained by the bank. Therefore, this Court passed an order on 20-04-2018 to the following effect:

"Sri B.S. Prasad, learned standing counsel for the respondent-bank, would submit that the petitioner was instrumental in a fraud having been played on Punjab National Bank; and since the matter is still under investigation, the respondent-bank is not willing to permit the petitioner to redeem his property on payment of Rs.1.20 Crores. The fact, however, remains that the highest bidder in the auction had offered to pay Rs.1.19 crores; but for the intervention of this Court, the sale would have been confirmed in his favour; and the respondent-bank would have issued a sale certificate and released the title documents in his favour, on receipt of the total sale consideration of Rs.1.19 crores.

Pursuant to the interim order passed by us, in WPMP No.37905 of 2017, in W.P.No.30425 of 2017 dated 22.09.2017, the petitioner has already paid a sum of Rs.1.20 crores, which is Rs.1,00,000/- more than the highest bid received in the auction conducted by the respondent-bank.

As the respondent-bank now expresses reservation, in releasing the title documents in the petitioner's favour, it would be wholly inequitable to permit the respondent-bank to retain Rs.1.20 crores deposited by the petitioner, since such deposit was only made pursuant to the interim order passed by us. The respondent-bank can either refuse to receive the said money, and continue the mortgage, or receive payment and release the documents. They cannot be permitted to do both.

As allegations are leveled against the petitioner, of his having played a fraud on Punjab National Bank, it is but appropriate that both the petitioner and the respondent-bank ascertain whether the respondent-bank is willing to return Rs.1.20 crores paid by the petitioner, pursuant to the aforesaid interim order passed by us, and whether the petitioner is ready to receive the said amount and for the mortgage to continue in favour of the respondent-bank."

5. Pursuant to the said interim order, the bank has now issued a letter dated 12-09-2018 to the petitioner. It reads as follows:

"You are a guarantor in respect of the loan facilities to the tune of Rs.17.48 crores sanctioned to M/s. M. Tare Pvt. Ltd., you have offered your house property bearing No.16-31-IX MIG-II-50-Phase-9, situated at KPHB Colony, Hyderabad. After the loan accounts were classified as Non-Performing Asset, the Bank initiated measures under SARFAESI

Act, 2002 and the above properties were put to auction for sale on 07-09-2017. You have filed the above writ petition challenging the proposed sale of the above properties, the Hon'ble Court was pleased to pass an order on 22-09-2017 to deposit Rs.1.20 crores which is more than the highest bid received by the Bank in the auction conducted for Rs.1.19 crores by Rs.1.00lakh. The Hon'ble High Court was further pleased to pass an order on 20-04-2018 in the above writ petition and inter-alia observed that if the Bank is willing to return Rs.1.20 crores paid by you, pursuant to the interim orders dt. 22-09-2017 and whether you are ready to receive the said amount and for the mortgage too continue in favour of the Bank. In the light of the orders passed in the above writ petition and in the light of your letter dt.12-07-2018 the Bank is willing to release the property from mortgage by accepting Rs.1.20 crores deposited by you and continue to be liable to the Bank as guarantor for the remaining outstanding liability in the subject loan account. You may withdraw the above writ petition and we are agreeable to return the title deeds pertaining to the above property. Since you are not auction purchaser, the sale certificate cannot be issued and we will release the mortgage and return the title deeds.

6. In the light of the above, the grievance of the petitioner should be treated as having been redressed. If the petitioner is willing to accept the terms indicated in the letter dated 12-09-2018, he may communicate the same in writing to the bank within a period of two (2) weeks from the date of receipt of a copy of the order and then on receipt of such communication within a period of two (2) weeks thereafter, the documents may be released to the petitioner.

Accordingly, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 27-11-2018

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