

\* 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

\* THE HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.NO.18142 of 2018

% Date: 13-11-2018

# Between:

Gottipati Suneetha,  
W/o. Gopala Krishna,  
R/o. D.No.1-120,  
Batla Penumarru Village,  
Movva Mandal, Krishna District.

.... Petitioner

And

Canara Bank,  
Madhunagar Branch, Vijayawada,  
Rep. by its Authorized Officer.

... Respondent

! Counsel for the Petitioner : Mr. V. Roopesh Kumar Reddy,

^ Counsel for Respondent : Mr. Dishit Battacharjee

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? Cases referred

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

WRIT PETITION No.18142 of 2018

ORDER: (Per VRS,J.)

Challenging the auction sale conducted by the Bank in terms of the provisions of SARFAESI Act, 2002 and an order passed by the Chief Judicial Magistrate in an application under Section 14 of the SARFAESI Act, 2002, the borrower has come up with the above writ petition.

2. Heard Mr. V. Roopesh Kumar Reddy, learned counsel for the petitioner and Mr. Dishit Bhattacharjee, learned Standing Counsel appearing for the respondent-Bank.

3. Admittedly, as against the sale notice dated 04.01.2018 published in newspapers, the petitioner has gone to the Debts Recovery Tribunal in an appeal under Section 17. In the said appeal S.A.No.19 of 2018 the Tribunal passed a conditional order of stay on 31.01.2018. The conditional order of stay reads as follows:

“Counter filed on behalf of respondent bank opposing to grant stay of proceedings. Heard both the Ld. Counsel. Considering the facts and circumstances of the case, it is not found feasible to grant any interim stay orders on auction notice/sale. The respondent bank is directed to go ahead with sale pursuant to e-auction sale notice dated 04.01.2018 including auction scheduled to be held on 06.02.2018 in respect of schedule property, however confirmation of sale may be deferred till further orders in respect of the schedule property on condition that the petitioner/applicant shall at least deposit 15% of the notice amount into the respondent bank within 15 days from the date of this order and another 15% of the notice amount to be deposited into the respondent bank with 5 days thereafter by the petitioner. In the event of petitioner's failing to deposit any of the amounts mentioned above, the deferment of confirmation of sale so granted this day shall stand vacated automatically and the respondent bank will be at liberty to proceed further in the matter as per rules.”

Call on 05.03.2018 for compliance and for further hearing in SA/IA.”

4. In fact, the date of auction sale was 06.02.2018. The conditional order of stay was granted on 31.01.2018. Obviously the conditional order was not complied with. The conditional order was not even challenged in any forum. Therefore, the Bank proceeded with the auction.

5. After conducting the auction the Bank also moved the Chief Judicial Magistrate with an application under Section 14 for possession. The Chief Judicial Magistrate passed an order appointing an Advocate Commissioner and directing him to take possession. At that stage, challenging the sale held on 06.02.2018 and also challenging the appointment of the Commissioner under Section 14, the petitioner has come up with the above writ petition.

6. The petitioner cannot ride two horses. The petitioner has already approached the Tribunal challenging the auction notice dated 04.01.2018. Having failed to comply with the conditional order and thereby allowing the auction to take place on 06.02.2018, it is not open to the petitioner to shift to a different forum to challenge the consequences that fell upon him due to the non-compliance of the conditional order passed by the Tribunal. Therefore, the first part of the prayer challenging the sale held on 06.02.2018 is not maintainable before this forum.

7. Coming to the second part of the relief sought, which is as against the order passed by the Chief Judicial Magistrate under Section 14, the contention of the learned counsel is that the Bank has taken contradictory stands. According to the learned counsel, the Bank proceeded as though sale was conducted and possession handed over, but thereafter the Bank has gone before the Chief Judicial Magistrate seeking possession.

8. We do not know how it will improve the case of the petitioner. Assuming that the Bank hold out a false statement that they have handed over possession to the auction purchaser, it is a false statement made by the Bank to the auction purchaser and not to the petitioner. Therefore, nothing turns on the said representation of the Bank. Hence the appropriate course of action open to the petitioner is only to work out her remedies in the appeal pending before the Tribunal and not to come up with a writ petition on the subsequent events that were only consequential to the failure of the petitioner to comply with the conditional order. Accordingly the writ petition is dismissed. There will be no order as to costs.

9. As a sequel, pending miscellaneous petitions, if any, shall stand closed.



JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

13<sup>th</sup> November, 2018  
Js.

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

WRIT PETITION No.18142 of 2018



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