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.19054 OF 2018

Date:25.10.2018

Between:
Smt. Organti Sarojini w/o.Eswara Rao,
R/o.Indira Nagar Colony, Narasannapeta Town & Mandal,
Srikakulam District and another

… Petitioners

v.

The Authorized Officer & Chief Manager,
Andhra Bank, Main Branch, Old GT Road,
Srikakulam Officer and others.

.. Respondents

For Petitioners : Mr. P. Rama Sharana Sharma

For Respondents : Mr. V. Dyumani

Gist :

Head Note :

Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.19054 OF 2018

ORDER: ***(Per V. Ramasubramanian, J)***

The petitioners have come up with the above writ petition challenging an order passed by the Debts Recovery Tribunal (DRT) in an appeal under Section 17 of the Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitisation Act").

2. Heard M. P. Rama Sharana Sharma, learned counsel for the petitioners and Smt. V. Dyumani, learned Standing Counsel for the 1st respondent Bank.

3. On the ground that the account of the petitioners had become a non-performing asset, the Authorized Officer of the bank brought the properties to sale through an auction notice dated 26.12.2014. Challenging the possession notice dated 14.11.2014 as well as the auction notice dated 26.12.2014, the borrowers filed an appeal in SA No.17/2015, on the file of the Debts Recovery Tribunal. It appears that the Tribunal was not functioning, due to non-posting of the Presiding Officer for some time. However, an incharge arrangement was made and a petition for stay filed by the borrowers before the Tribunal got dismissed.

4. Thereafter, the petitioners filed a writ petition in WP No.4483 of 2015 challenging the confirmation of auction. In that writ

petition, a conditional order was passed on 06.03.2015, which reads as follows:

> "While Sri A.Rama Rao, learned counsel for the petitioners, states that, while the petitioners are ready to pay the entire bid amount of Rs.44.32 lakhs, equal to what was paid by the third respondent during auction, the respondent-bank is not receiving the amount. Smt. V.Dyumani, learned counsel for the first respondent, would submit that the third respondent has already paid Rs.44.32 lakhs; a sale certificate has already been issued in her favour; possession has also been delivered; and the first respondent-bank has only to execute a registered sale deed in favour of the third respondent.
>
> Section 13(8) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 enables the borrower to pay all dues of the secured creditor together with all costs, charges and expenses before the date fixed for transfer. As the sale deed has not yet been executed, we consider it appropriate to permit the petitioners to deposit Rs.44.32 lakhs with the first respondent-bank by 07.03.2015. The first respondent-bank shall receive the said amount."

5. Thereafter the writ petition itself was disposed of by a final order dated 25.06.2015. The operative portion of the final order passed in the writ petition reads as follows:

> "Although the sale notice and auction conducted on 27.01.2015 are questioned on several grounds in this writ petition, in view of the pendency of S.A.No.17 of 2015 before the Tribunal and the averments made by the respondents in their counter affidavits, we are of the considered opinion that it is not the appropriate stage to record any findings thereon. However, inasmuch as it is not in dispute that the sale certificate is not registered in favour of the 3rd respondent, we deem it appropriate to dispose of the writ petition with a direction to the 2nd respondent-Debts Recovery Tribunal, Visakhapatnam, to consider the grounds raised in SA.No.17 of 2015 independently and dispose of the same on its own merits, uninfluenced by any of the observations made in this order, as expeditiously as possible,

> preferably within a period of three months from today, after hearing the 3rd respondent also along with the petitioners and the respondents. Further the respondents are directed not to register the sale certificate in favour of the 3rd respondent till SA.No.17 of 2015 is disposed of by the Tribunal.
>
> Subject to the above observations and directions, the writ petition is disposed of."

6. Thus, the petitioners had a limited protection, by virtue of the final order passed in the writ petition and the Bank did not execute the sale deed in favour of the auction purchaser. However, the appeal filed by the petitioners before the DRT, was dismissed on 24.04.2018. Challenging the said order, the petitioners have come up with the above writ petition.

7. Normally, as against an order passed under Section 17 of the Securitisation Act, 2002, an appeal would lie to the Debts Recovery Appellate Tribunal under Section 18 of the Act. It is not as though this Court is devoid of the power to test the correctness of the order of the Tribunal. But, in the case on hand, the main grievance of the petitioners is that the petitioners have lost both their property as well as a huge amount paid pursuant to a conditional order passed by this Court in WP No.4483 of 2015. It is the contention of the learned counsel for the petitioners that the petitioners cannot be worse off, for coming to Court and to suffer such an order. It is true that the petitioners did not stand to gain by coming to this Court. On the contrary they stood to lose. But, the fact of the matter is that after the dismissal of the appeal by the DRT, on 24.04.2018, the Bank claims to have executed a sale deed also. Therefore, there are larger issues

and the petitioners may have to seek amendment of the prayer in the appeal for setting aside the sale etc. All these issues cannot be resolved in a writ petition arising out of the order of the Tribunal.

8. Therefore, giving liberty to the petitioners to move the Debts Recovery Appellate Tribunal, this writ petition is dismissed. Obviously, there may be a delay in the petitioners approaching the Debts Recovery Appellate Tribunal. But, the delay deserves to be condoned, in the light of the fact that the above writ petition was filed on 04.06.2018 and the same was pending before this Court for such a long time. The Tribunal may take into account Section 14 of the Limitation Act and other factors, while considering the question of delay.

The Registry to return the original copy of the order of the Debts Recovery Tribunal to enable the petitioners to file an appeal.

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

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

October 25, 2018

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