THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO.21266 OF 2018

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

A Division Bench of this Court, in its order in **Sri Sai Annadhatha Polymers and Ors. v. The Canara Bank**[1], held that the notice, under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 ("the Rules" for brevity), should be issued 30 days prior to publication of the notice under Rule 9(1) of the Rules in view of the amendment to Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity) whereunder the right conferred on a borrower, to repay the entire amount due and thereby prevent the mortgaged property from being put to sale, should be exercised before the date of publication of the notice for public auction.

In the light of the law declared by the Division Bench, the notice under Rule 8(6) of the Rules, and publication of the notice under Rule 9(1) of the Rules, cannot be made on the same day; and the notice under Rule 8(6) of the Rules must precede, publication of the notice under Rule 9(1) of the Rules, by 30 days; and the sale notice under Rule 9(1) must be published 30 days prior to the date of auction.

While the petitioner would contend that both the notices under Rule 8(6) and 9(1) of the Rules were issued on the very same day i.e. on 21.05.2018 fixing the date of auction as 28.06.2018, Sri

[1] **MANU/AP/0341/2018**

B.N.Swamiji, learned counsel for the respondent-Bank, would contend that the notice under Rule 8(6) of the Rules was sent to the partnership firm, and to both its partners, on 12.04.2018; one of the partners of the firm received the said notice; however the petitioner, both in his individual capacity and as a partner of the partnership firm, avoided receipt of the notice; and, consequently, service of notice under Rule 8(6) of the Rules on the other partner must be deemed to be service of notice on the partnership firm itself.

A Division Bench of this Court, by its order in I.A.No.1 of 2018 in W.P.No.21266 of 2018 dated 27.06.2018, granted interim stay of the auction; and, consequently, no auction was held on 28.06.2018. It is evident from the documents, annexed to the counter-affidavit, that three separate notices were sent under Rule 8(6) of the Rules, one to the partnership firm and the other two to its partners. While Smt. B.Sugunamma, one of the partners, received the notice under Rule 8(6) of the Rules dated 21.05.2018, the notices, sent to both the partnership firm and to Sri B.Narasimha Reddy, the other partner, were returned unserved.

In the absence of the notice under Rule 8(6) of the Rules being served on 12.04.2018, and as the notice dated 21.05.2018 specifically refers both to Section 13(4) of the SARFAESI Act and Rule 8(6) of the Rules, it is difficult to accept the submission of Sri B.N.Swamiji, learned counsel for the respondent-Bank, that service of the notice under Rule 8(6) of the Rules dated 12.04.2018 on Smt. Sugunamma, one of the partners, must be construed as service of notice on the partnership firm, and Sri B.Narasimha Reddy, the other partner.

In the light of the Division Bench judgment in **Sri Sai Annadhatha Polymers**[1], the notices under Rule 8(6) and Rule 9(1) of the Rules cannot be issued on the same day. Consequently, the sale notice issued under Rule 9(1) of the Rules dated 21.05.2018 is set aside. Since the petitioner admits receipt of the notice under Rule 8(6) of the Rules dated 21.05.2018, it would suffice for the respondent-Bank to publish the notice, under Rule 9(1) of the Rules, fixing the date of auction 30 days beyond the date of the said sale notice; and, thereafter, take action in accordance with law.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(D.V.S.S.SOMAYAJULU, J)

23rd October 2018
RRB