THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.21188 of 2018

ORDER: (*Per* Hon'ble Sri Justice Sanjay Kumar)

This writ petition was filed assailing the order dated 15.06.2018 passed by the Debts Recovery Tribunal-II, Hyderabad, in I.A.No.2567/2018 in S.A.No.230/2018 filed by the petitioner.

2. The said IA was filed seeking interim stay of all further proceedings in relation to the petition schedule property pursuant to the auction notice dated 30.05.2018 issued by the Standard Chartered Bank, the first respondent, fixing the date of auction as 19.06.2018.

3. By the order dated 15.06.2018, the Tribunal granted interim stay of the auction sale of the petition schedule property scheduled on 19.06.2018 pursuant to the e-auction sale notice dated 30.05.2018 subject to the petitioner-applicant depositing 30% of the total outstanding dues, as mentioned in the auction sale notice dated 30.05.2018, in two instalments - the first instalment of 15% to be deposited before the date and time of auction and the second instalment of 15% to be deposited within two weeks thereafter. The Tribunal also made it clear that in the event of failure on the part of the petitioner in compliance with either of the aforestated conditions, the interim stay would stand vacated and the bank was given the liberty to proceed as per Rules. Aggrieved by the

conditions imposed by the Tribunal, the petitioner approached this Court by way of this writ petition on 22.06.2018.

4. Admittedly, the petitioner failed to comply with the first limb of the order under challenge which required him to make the initial deposit of 15% before the auction which was scheduled to be held on 19.06.2018. It appears that the bank thereupon went ahead with the sale by virtue of the liberty given to it by the Tribunal, in the event of default being committed by the petitioner, and respondent Nos.3 and 4 herein emerged as the highest bidders.

5. By order dated 25.06.2018, this Court granted interim stay and the said order reads as under:

> " As to whether the Tribunal was justified in imposing conditions when the petitioner/applicant alleged and demonstrated a clear violation of the statutory procedure prescribed under Rules 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002, in the context of the amended provisions of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requires examination.
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> The stay granted by the Tribunal shall accordingly operate without reference to the conditions imposed and the respondent Bank shall not take further steps pursuant to the auction notice dated 30.05.2018, pending further orders."

6. I.A.No.3 of 2018 was filed by the Bank to vacate the aforestated order.

7. Heard Sri B.Chandrasen Reddy, learned counsel for the petitioner, Sri T.Bala Mohan Reddy, learned counsel for the Standard Chartered Bank and Sri Vedula Venkata Ramana,

learned Senior Counsel appearing for M/s.Bharadwaj Associates, learned counsel for respondent Nos.3 and 4.

8. Sri B.Chandrasen Reddy, learned counsel, would contend that having issued a notice under Section 8(6) of the Rules of 2002, the Bank was bound to allow an opportunity to the petitioner to redeem the property. We are however of the opinion that this aspect of the matter cannot be considered by this Court, as the securitisation application filed by the petitioner under Section 17 of the SARFAESI Act is pending before the Tribunal and this Court cannot foreclose consideration of all aspects therein, by making any observation on the merits of the matter.

9. We are informed that the subject auction sale notice dated 30.05.2018 was not represent the first attempt on the part of the Bank to put the secured asset to sale. The first sale notice in this regard under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (for short, the Rules of 2002) was published on 15.03.2018, whereunder the sale was scheduled to be held on 20.03.2018. However, by virtue of the stay order secured by the second respondent herein, the wife of the petitioner and a joint borrower along with him, the sale could not take place on 20.03.2018 as scheduled. Owing to the failure of the said sale, the Bank resorted to issuance of second sale notice which was published in the newspapers on 30.05.2018 proposing to hold the auction sale on 19.06.2018. Unaware of the fact that this was the second auction sale notice, this Court granted the aforestated interim order dated

25.06.2018 keeping in mind the amended provisions of Section 13(8) of the SARFAESI Act, as per which the right of redemption available to a borrower stands extinguished upon publication of the sale notice under Rule 9(1) of the Rules of 2002. As to whether such a right would revive in the event the sale does not fructify has not fallen for consideration till date. Be that as it may.

10. As the failure of the petitioner to abide by the conditional order dated 15.06.2018 has already culminated in the Bank holding an auction successfully, resulting in the entry of respondent Nos.3 and 4 into the picture as auction purchasers, the present challenge to the order dated 15.06.2018 passed by the Tribunal no longer survives for adjudication independently. It is for the petitioner to take necessary steps in the pending securitization application or otherwise and establish his case before the Tribunal.

11. Leaving it open to him to do so, the writ petition is dismissed. Interim order dated 25.06.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 17.07.2018
TJMR