HON’BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON’BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NOs.1550 AND 27792 OF 2018

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

Heard Sri Vijay Kumar, learned counsel appearing on behalf of Sri J.Venugopal, learned counsel for the respondent in WP.No.1550 of 2018, Sri S.Maruti Rao, learned counsel appearing on behalf of Sri T.Ravikanth, learned counsel for the petitioner in WP.No.27792 of 2018, Sri V.S.R.Anjaneyulu, learned counsel for the petitioner in WP.No.1550 of 2018, Sri Ambadipudi Satyanarayana, learned Standing Counsel for the State Bank of India (SBI), and the learned Government Pleader for Home.

WP.No.27792 of 2018 is filed by the borrower questioning the action of the first respondent-bank in conducting e-auction sale on 18.11.2015, and in confirming the sale in favour of the second respondent, (petitioner in WP.No.1550 of 2018), without taking physical possession of the building premises by invoking Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI ACT” for brevity) as illegal, arbitrary and unjust. A consequential direction is sought to declare the auction, and the confirmation of sale of the above said property, as null and void.

WP.No.1550 of 2018 is filed by the auction-purchaser seeking a mandamus to direct the respondent-bank (State Bank of India) to deliver vacant physical possession of the subject building, and its inaction in delivering possession, as illegal, arbitrary and violative of the SARFAESI Act and the Security Interest

(Enforcement) Rules, 2002 ("the Rules" for brevity). A consequential direction is sought to the respondent-State Bank of India to complete the entire process, including registration of the sale certificate within a specified time-frame besides directing payment of interest @ 24% per annum on Rs.4,32,00,000/-, deposited by the petitioner, from the date of deposit till vacant possession is delivered.

Facts, to the limited extent necessary, are that, on the third respondent in WP.No.1550 of 2018 and the petitioner in WP.No.27792 of 2018 having defaulted in repayment of the loan, and on their loan account being declared a non-performing asset, the respondent-Bank initiated proceedings under the SARFAESI Act. A notice was issued under Section 13(2) and, thereafter, under Section 13(4) of the SARFAESI Act questioning which the borrower approached the Debts Recovery Tribunal, Hyderabad ("the DRT" for brevity) by filing S.A.No.306 of 2014. They filed I.A.No.2417 of 2014, in S.A.No.306 of 2014, seeking stay of all further proceedings including sale of the subject property pursuant to the e-auction sale notice dated 03.06.2014 published in the newspapers on 04.06.2014.

In its order dated 08.07.2014, the DRT noted that earlier, on an application filed by the petitioner in I.A.No.1540 of 2014 to stay the auction sale of the schedule property scheduled to be held on 23.04.2014, pursuant to the earlier e-auction sale notice dated 19.03.2014, the Tribunal had, by its order dated 22.04.2014, granted conditional stay directing the petitioner to deposit Rs.70,00,000/- within fifteen days from the date of the order; and, as the borrower failed to comply with the conditional order passed by the DRT, the respondent-Bank had proceeded with the sale of the schedule property by issuing e-auction sale notice dated 03.06.2014, which was published in the newspapers on 04.06.2014, fixing the date of auction sale as 07.07.2014. The DRT held that the applicant-borrower had failed to show her *bona fides* by complying with the earlier order of the DRT directing her to deposit Rs.70,00,000/-; and, therefore, it did not find any reason to interfere with the sale proceedings, initiated by the respondent-Bank against the applicant, to recover its legitimate debt. I.A.No.2417 of 2014 was dismissed giving liberty to the respondent-bank to proceed with the auction sale of the schedule property scheduled to be held on 09.07.2014, pursuant to the e-auction sale notice dated 03.06.2014 published in the newspapers on 04.06.2014.

The respondent-bank conducted an auction thereafter; and, on the petitioner in WP.No.1550 of 2018 being found to be the highest bidder, letter dated 17.12.2015 was issued by the Bank acknowledging receipt of the full bid amount from the auction-purchaser. Thereafter a sale certificate was issued to the auction-purchaser, under Rule 9(6) of the Rules, effecting sale of the immovable schedule property, secured in favour of the respondent-bank, in favour of the auction-purchaser free from all encumbrances but subject to the outcome of S.A.No.306 of 2014 filed by the borrower before the DRT, Hyderabad. The said sale certificate records that possession of the subject property, purchased by the auction-purchaser, would be delivered after disposal of the petition filed before the Chief Metropolitan Magistrate, Nampally, Hyderabad.

Thereafter, the Chief Metropolitan Magistrate passed an order, under Section 14 of the SARFAESI Act, on 07.11.2016 appointing an Advocate-Commissioner to deliver vacant and physical possession of the subject property to the respondent-bank. Despite the order of the Chief Metropolitan Magistrate, possession of the subject property has not been delivered to the respondent-bank for the past nearly one year nine months. The report, called for by this Court from the Chief Metropolitan Magistrate, records the unsuccessful efforts made earlier to deliver vacant possession of the subject property to the respondent-Bank.

Eventually, in its order dated 08.08.2018, a Division Bench of this Court recorded the submission of the learned Government Pleader for Home that sufficient steps would be taken by the police to see that the warrant is executed. Today Sri Ambadipudi Satyanarayana, learned counsel for the respondent-Bank, would submit that the tenants, in occupation of the subject property, have threatened to commit suicide, in case possession of the subject property was forcibly taken from them; and, while the Advocate-Commissioner was able to deliver vacant possession of the pent-house of the building, the remaining portions of the building, occupied by the tenants, have not been delivered to the respondent-Bank till date, as the tenants had sought further time till 29.08.2018. When we asked Sri J.Venugopal, learned counsel for the respondent, whether the tenants were ready to deliver vacant possession atleast by then, learned counsel would submit that he has no instructions in this regard.

The order of the Chief Metropolitan Magistrate, issued under Section 14 of the SARFAESI Act, required the Advocate-

Commissioner to take physical possession of the subject property, and hand it over to the respondent-Bank. Any difficulty which the Advocate-Commissioner, appointed by the Chief Metropolitan Magistrate, may have, in executing the warrant, would have required him to seek adequate police support. It is not as if the police officials are helpless, in case any of the tenants threaten to take law into their own hands, and thwart the attempts of the Advocate-Commissioner to take physical possession of the subject property.

The Advocate-Commissioner is present in Court today, and undertakes to abide by the order of this Court; and, with the help of the police officials, to take physical and vacant possession of the subject property, and deliver it to the respondent-Bank within three (3) days from today.

We consider it appropriate, in such circumstances, to dispose of WP.No.1550 of 2018 directing the Advocate-Commissioner, appointed by the Chief Metropolitan Magistrate, Nampally, to take such police assistance as he may require to deliver physical possession of the subject property to the respondent-Bank within three (3) days from today. On such property being delivered to it, the respondent-Bank shall, in turn, deliver it to the auction-purchaser. Till S.A.No.306 of 2014 is finally heard and decided, the petitioner in W.P.No.1550 of 2018 (i.e the auction purchaser) shall not alienate the subject property or create any third party rights thereupon. Needless to state, as recorded in the sale certificate itself, that sale of the subject property, and all proceedings consequent thereto, shall be subject to the result of S.A.No.306 of 2014.

Since S.A.No.306 of 2014, filed by the petitioner in W.P.No.27792 of 2018 is still pending before the DRT, and a similar relief sought for by them earlier in I.A.No.2417 of 2014 questioning the earlier e-auction notice was dismissed by the DRT on the ground that they had failed to comply with the earlier directions issued by the DRT in I.A.No.1540 of 2014 directing them to deposit Rs.70,00,000/- within fifteen days, we see no reason to grant any such relief in these writ proceedings, in the exercise of our discretionary jurisdiction under Article 226 of the Constitution of India, more so, as despite repeated indulgence shown by the DRT, the petitioner failed to pay even a single rupee to the respondent-Bank pursuant to several orders passed by the DRT. W.P.No.27792 of 2018 fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

21st August 2018

NOTE: Issue CC today
B/O
RRB