

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.31241 of 2015

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

The relief sought for in this writ petition is for a mandamus to declare the action of the 1st respondent, in publishing the e-auction notice dated 27.08.2015 in a daily newspaper on 28.08.2015 seeking to conduct an auction on 29.09.2015, as arbitrary and illegal.

The petitioner is a guarantor of a loan extended to respondents 2 to 4 herein. It is his case that, while he had extended a guarantee, the said guarantee lapsed even before the account of the borrower was declared a Non Performing Asset (NPA) and, consequently, no action can be taken against him under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

This Court by its order dated 28.09.2015, while granting stay of auction in so far as the item claimed by the petitioner is concerned, directed him to deposit Rs.15,00,000/- within a period of two weeks. Sri P.Hari Prasad, learned counsel for the petitioner, would submit that the petitioner had, in compliance with the interim order, deposited Rs.15,00,000/-; and the auction scheduled to be held on 29.09.2015 did not take place.

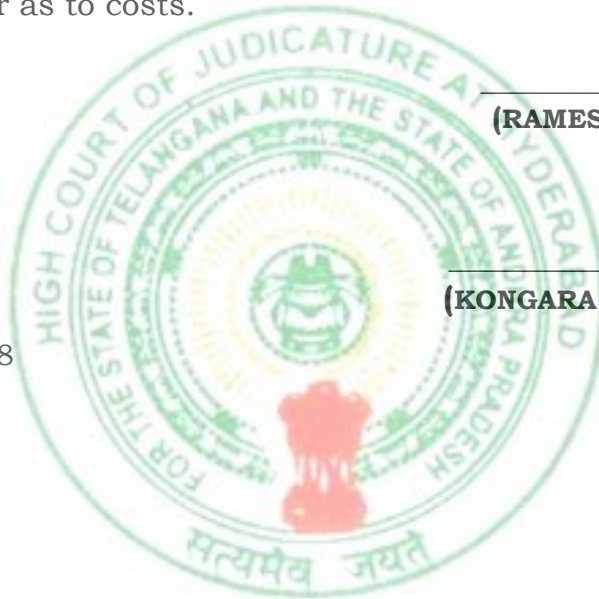
The respondent-bank is said to have filed O.A.No.1479 of 2014, against the borrower and the petitioner-guarantor, under the provisions of the Recovery of Debts and Bankruptcy Act, 1993, before the Debt Recovery Tribunal, Hyderabad. Sri P.Hari Prasad, learned counsel for the petitioner, would submit that, since the petitioner can work out his remedies in the O.A, it would suffice if the interim order granted by this Court were to be continued till the disposal of the O.A.

We see no reason to accede to such a request. As a result of the interim order passed by this Court, the auction scheduled to be held on 29.09.2015 did not take place. Since the petitioner is a party to the O.A, filed by the respondent-bank before the Debt Recovery Tribunal, it is always open to him, in case the respondent-bank puts the subject property to auction afresh, to avail his judicial remedies before the Debt Recovery Tribunal.

Leaving it open to the petitioner to do so, the Writ Petition fails and is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

05th October, 2018
JSU



(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



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Date: 05.10.2018

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