* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

* HONOURABLE SRI JUSTICE P. KESHAVA RAO

+ W.P.Nos.31410 & 39499 of 2018

% Date: 26-12-2018

W.P.No.31410/2018

Between:

Kotak Mahindra Bank, Leagal Department,
Regional office at 5th Floor, Naspur House,
Himayatnagar, Hyderabad – 500 029,
Rep. by its Authorised Signatory Mr. Ramesh Kumar H.

…. Petitioner

And

1. Andhra Bank, having its office at, SARM Branch, 1st Floor, Andhra Bank Building, Sultan Bazaar, Koti, Hyderabad, rep. by its Assistant Branch Manager.
2. Meliora Asset Reconstruction Company Limited, 503, May Fair Garden, Road No.12, Banjara Hills, Hyderabad – 500034, rep. by its Authorised Officer.
3. Reliance Cellulose Products Ltd., Office at 3-E Surya Towers, 105, SP Road, Secunderabad – 500 003, rep. by its Managing Director.

… Respondents

! Counsel for the Petitioner (in W.P.No.31410/2018) : Mr. S. Niranjan Reddy

^ Counsel for Respondent No.1 : Mr. Amabtipudi Satyanarayana

^ Counsel for Respondent No.2 : Mr. V. Muralidhar

W.P.No.31410/2018

#Between:

M/s. SLS Properties,
Rep. by its Authorized Signatory K.C. Venkateswarlu,
Office at Sy.No.74/1, 74/2, 74/3
Panathur, Marathalli, Sarjapur,
ORR, Bengaluru – 560 103.

…. Petitioner

And

1. The State of Telangana, rep. by its Principal Secretary, Commercial Tax Department, Secretariat, Hyderabad.
2. The Commercial Taxes, S.D. Road Circle, Begumpet Division, Office at 6-3-789, 4th Floor, Pavani Prestige, Ameerpet, Hyderabad.
3. M/s. Reliance Cellulose Products Limited, rep. by its CMD, Shyam Sundar Jhunjhunwala, having its Office at 3-E, Surya Towers, 105, S.P. Road, Secunderabad.
4. M/s. Meliora Asset Reconstruction Company Limited, rep. by its Authorised Signatory, Having its Office at 106, Bharat Towers, 5th Lane, Dwaraka Nagar, Visakhapatnam – 530 016.
5. Andhra Bank, rep. by its Authorized Officer, R.P. Road Branch, 3-1-17 to 21, R.P. Road, Hyderabad – 500 003.
6. The Joint Sub Registrar-1, Sanga Reddy, Sanga Reddy District.

… Respondents

! Counsel for the Petitioner : Mr. P. Sri Harsha Reddy
(in W.P.No.39499/2018)

^ Counsel for Respondents 1 & 2 : Mr. T. Vinod Kumar Spl. S.C

^ Counsel for Respondent No.4 : Mr. Togiti Nagender

^ Counsel for Respondent No.5 : Mr. Ambatipudi Satyanarayana

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> HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

W.P.Nos.31410 & 39499 of 2018

COMMON ORDER: (Per VRS,J)

While the first writ petition is filed by a Bank, which held a *pari passu* charge over the secured assets, along with the Andhra Bank (1st respondent in the writ petition), the 2nd respondent is filed by the auction purchaser.

2. Heard Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the petitioner in the first writ petition, Mr. P. Sri Harsha Reddy, learned counsel appearing for the petitioner in the second writ petition, Mr. T. Vinod Kumar, learned Special Standing Counsel for the Commercial Tax Department, Mr. V. Murali Manohar and Mr. Togiti Nagender learned counsel appearing for the Asset Reconstruction Company in whose favour Andhra Bank has assigned the debts, and Mr. Ambtipudi Satyanarayana, learned counsel appearing for the borrower.

3. The secured assets of the borrower company were brought to sale in an auction conducted on 27.04.2018. The Andhra Bank as well as Kotak Mahindra Bank had advanced loans on the security of the very same properties and both of them had *pari passu* charge in the secured asset in the ratio of 66.23% in favour of Andhra Bank and 33.77% in favour of Kotak Mahindra Bank. The Andhra Bank has now assigned its debts in favour of Meliora Asset Reconstruction Company and it was the Asset Reconstruction Company, which brought the property to sale.

4. Finding that their amounts are not paid from out of the sale proceeds, the Kotak Mahindra Bank has come up with the first writ petition challenging even the very auction, on the ground that the

mortgagees could have brought the properties to sale only through a concerted auction.

5. In the mean time, there was an order of attachment issued by the Commercial Tax Department on account of which the auction purchaser could not get the sale certificate registered. Therefore, he came up with the second writ petition in W.P.No.39499 of 2018 challenging the attachment order issued by the Commercial Tax Department and seeking a direction to the Sub-Registrar to register the property.

6. On 04.09.2018 when the first writ petition came up for orders as to admission, this Court passed an interim order, which reads as follows:

> "Notice before admission returnable in three weeks.
>
> The 1st respondent assigned the debt, of the 3rd respondent, to the 2nd respondent. The petitioner herein invoked the jurisdiction of this Court by filing W.P.No.15639 of 2018 to declare the action of the 2nd respondent, in invoking the provisions of the SARFAESI Act, even without the petitioners consent and without securing their interest, as arbitrary and illegal. A Division Bench of this court, by its order in W.P.No.15639 of 2018 dated 27.04.2018, directed the respondents to keep the sale proceeds of the auction in a fixed deposit, which would be subject to the rights of the debtor to workout his remedies.
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> The petitioner claims to have a *pari passu* charge over the property mortgaged in favour of the 2nd respondent by the 3rd respondent. During the pendency of W.P.No.15639 of 2018, both the petitioner and the 2nd respondent are said to have entered into a memorandum of understanding on 31.07.2018, in terms of which the parties were required to jointly file the memorandum of understanding, withdraw W.P.No.15639 of 2018, and immediately thereafter the 2nd respondent was required to transfer a sum of Rs.12 crores to the petitioner- Kotak Mahindra Bank within two weeks from the date of receipt of the order of the High court.
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> In compliance with the terms and conditions of the memorandum of understanding, the petitioner's Counsel made an application to withdraw the writ petition reserving liberty to avail appropriate remedies, in the event a fresh cause of auction arose. The Division Bench, by its order dated 09.08.2018, dismissed the writ petition as withdrawn with liberty as aforestated.
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> Contending that, despite withdrawal of the writ petition, the 2nd respondent had not transferred Rs.12 crores to the petitioner herein for the past more than three weeks, the petitioner has again invoked the jurisdiction of this Court expressing apprehension that the 2nd respondent

> may utilize the proceeds, received on the sale of the property over which a *pari passu* charge has been created in favour of the petitioner, without transferring a part thereof to the petitioner.
>
> With a view to safeguard the petitioner's interests we consider it appropriate to direct that, for a period of six weeks from today, the 2nd respondent shall keep a sum of Rs.12 crores, from out of the 37 crores received as consideration on the sale of the mortgaged property, in a cumulative interest bearing fixed deposit."

7. Pursuant to the said order, the Asset Reconstruction Company ought to have kept a sum of Rs.12 crores representing the amount payable to the Kotak Mahindra Bank, in a separate cumulative interest bearing fixed deposit.

8. Subsequently, the second writ petition came up for orders as to admission on 04.12.2018. An interim order was passed on the said date to the following effect:

> "Heard Mr. P. Sri Harsha Reddy, learned counsel for the petitioner. Mr. T. Vinod Kumar learned Special Standing Counsel for the Commercial Tax Department and Mr. T. Nagender, learned counsel appearing for the 4th respondent, which is the Asset Reconstruction Company.
>
> The petitioner is the successful bidder in an auction conducted by the Asset Reconstruction Company, which is the 4th respondent herein under the Securitization Act. He has deposited the entire sale consideration of Rs.37.10 crores and a sale certificate was also issued on 26.07.2018.
>
> But, the sale certificate could not be registered on account of an order of attachment issued by the commercial taxes Department to the tune of Rs.3,28,41,795/-.
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> Considering the fact that the interest of the Department can be safeguarded by a retention of so much money and the interest of the auction purchaser can be safeguarded by a direction as prayed for, this miscellaneous petition is disposed of to the following effect:
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> 1. The 4th respondent shall deposit with the Registrar (Judicial) of this Court a sum of Rs.3,28,41,795/-, within a period of two (2) weeks from the date of receipt of a coy of this order. Upon such deposit being made, the Registrar (Judicial) shall invest the same in a cumulative fixed deposit with the State Bank of India, High Court branch. The deposit shall be renewed from time to time, till the disposal of the writ petition.
> 2. Upon the 4th respondent producing the proof of having deposited the money with the Registrar

> (Judicial), the Sub-Registrar, who is the 6th respondent, shall register the sale certificate."

9. Pursuant to the interim order passed on 04.12.2018, the sale certificate has already been registered. Therefore, the main grievance of the auction purchaser, with regard to the refusal of the Sub-Registrar to register the sale certificate, stands redressed. Insofar as the challenge of the auction purchaser to the order of attachment is concerned, we do not think that the same is maintainable. An order of attachment can be challenged only by the assessee or by the person in whose hands the sale proceeds of the properties lie. Therefore, the first part of the prayer made by the auction purchaser in W.P.No.39499 of 2018 is not maintainable.

10. The second part of the prayer stands redressed, subject to the outcome of the appeal filed by the borrower on the file of the Debts Recovery Tribunal as against the sale. With this observation, the second writ petition W.P.No.39499 of 2018 is dismissed, as the cause does not survive any more. However, the amount of Rs.3,28,41,795/- paid in favour of the Registrar (Judicial) of this Court, by way of Demand Draft on 18.12.2018 representing the arrears as well as tax, shall be kept by the Registrar (Judicial) in a cumulative interest bearing fixed deposit. If at all the assessee or the mortgagees challenge the order of attachment and succeed, it is open to them to come back at that time asking for payment. With the above liberty the second writ petition is dismissed.

11. Insofar as the 1st writ petition is concerned, the prayer as it was originally made is for setting aside the auction. Today the stand taken by the petitioner-Bank is that if the petitioner is paid the appropriate share of the sale proceeds, the petitioner is prepared to give up their challenge to the validity of auction.

12. Though Mr. Ambatipudi Satyanarayana opposed the request of the learned Senior Counsel for the petitioner in the first writ petition for scaling down his prayer, we do not think that the right of the petitioner before this Court to scale down a prayer can be objected to by the respondents. A sum of Rs.12 crores has already been set apart pursuant to the interim order passed on 04.09.2018 in the first writ petition. This represents the amount payable to the Kotak Mahindra Bank, which is the petitioner in the first writ petition. Therefore, W.P.No.31410 of 2018 is disposed of directing the Asset Reconstruction Company to pay a sum of Rs.12 crores with accrued interest, to Kotak Mahindra Bank from out of the sale proceeds. However, if the borrower succeeds before the Debts Recovery Tribunal in having the sale set aside, Kotak Mahindra Bank as well as the Asset Reconstruction Company are liable to refund to the auction purchaser, the amount that they have apportioned between themselves.

13. Accordingly, W.P.No.31410 of 2018 is disposed of and W.P.No.39499 of 2018 is dismissed. There will be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J.

P. KESHAVA RAO, J.

26th December, 2018
Js.

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

W.P.Nos.31410 & 39499 of 2018

26th December, 2018

Js.