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

WRIT PETITION NO.33598 of 2018

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri R. Siva Sai Swaroop, Learned Counsel for the petitioner and Sri Tenneti Prabhu Dasu, Learned Counsel for the Caveator-respondent bank, and, with their consent, the Writ Petition is disposed of at the stage of admission. The proceedings, under challenge in this Writ Petition, is the auction notice dated 17.09.2018 putting the subject property to sale. A notice of sale by public auction was issued, under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, by the Authorised Officer, among others, to the petitioner on 06.08.2018.

Sri R. Siva Sai Swaroop, Learned Counsel for the petitioner, would submit, not without justification, that Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 requires the Authorised Officer to serve to the borrower a notice of thirty days for sale of the immoveable secured assets under Rule 8(5); and a notice under Rule 9(1) can only be issued thirty days after the notice under Rule 8(6), in the light of the law declared by a Division bench of this Court in **M/s. Venshiv Pharma Chem (P) Ltd. v. State Bank of India, Stressed Assets Recovery Branch, Koti, Hyderabad**[1].

In **M/s. Venshiv Pharma Chem (P) Ltd.**[1], a Division bench of this Court opined that Section 13(8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

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Interest Act, 2002 (for short 'the SARFAESI Act"), as amended by Act 44 of 2016 with effect from 01.09.2016, enabled a borrower to tender to the secured creditor, at any time before the date of publication of the notice for public auction, the dues of the secured creditor together with all costs, charges and expenses incurred by him; and the subject property would then not be put to public auction.

The Division bench in **M/s. Venshiv Pharma Chem (P) Ltd.**[1] observed that, since the right to repay the amounts due and redeem the property under Section 13(8) is available only before the date of publication of the notice for public auction under Rule 9(1), the notice under Rule 8(6) must precede the notice, under Rule 9(1), by atleast thirty days. In the present case, while the date of auction is no doubt 19.09.2018, the notice under Rule 9(1) was issued on 17.08.2018, less than two weeks from 06.08.2018 when the notice under Rule 8(6) was issued.

Since the notice under Rule 9(1) was issued less than two weeks of the notice issued under Rule 8(6), the law declared by the Division bench, in **M/s. Venshiv Pharma Chem (P) Ltd.**[1], would require the Rule 9(1) sale notice dated 17.08.2018 to be set aside. On the sale notice dated 17.08.2018 being set aside, the auction scheduled to be held on 19.09.2018 stands cancelled. Needless to state that the order now passed by us shall not disable the respondent bank from issuing a sale notice afresh, and conducting auction pursuant thereto, in accordance with law.

The Writ Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

Date: 18.09.2018
MRKR