HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.35023 of 2018

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

Heard Sri M.V.Durga Prasad, learned counsel for the petitioners, and Sri B.S.Prasad, learned counsel appearing on behalf of the 3rd respondent-bank.

Facts, to the limited extent necessary, are that the 3rd respondent-bank lent money to the 4th respondent represented by its sole proprietrix, the 5th respondent herein, on mortgage of certain properties. On their failure to make payment, the 3rd respondent-bank filed O.A.No.494 of 2011 before the Debt Recovery Tribunal under the provisions of the Recovery of Debts and Bankruptcy Act, 1993. O.A.No.494 of 2011 was allowed declaring that the applicant-bank was entitled for a recovery certificate against respondents 4 and 5 for a sum of Rs.1,54,20,951.64 ps with future interest @ 20.25%; they were entitled to sell the mortgaged property, and appropriate the sale proceeds towards the dues of the defendants; and they were entitled to proceed against respondents 4 and 5 for realisation of the amount along with interest till the date of realisation. The 3rd respondent-bank filed R.P.No.288 of 2014 in O.A.No.494 of 2011 before the Tax Recovery Officer who, by his order dated 09.02.2018, passed an order attaching the mortgaged property for it to be put to sale.

Sri M.V.Durga Prasad, learned counsel for the petitioners, would submit that the property belonged to the 6th petitioner and the husband of the 1st petitioner (and the father of petitioners 2 to 5); forged documents were filed by respondents 4 and 5 to obtain loan from the 3rd respondent-bank; in their complaint registered as FIR.No.167 of 2011 by the Shankarpally Police Station, pursuant to which a charge sheet was filed on 29.12.2014, the fact that these documents were fabricated is admitted;

despite which the bank has surreptitiously obtained an order of attachment, and is now seeking to put the properties to sale.

While it does appear from a reading of the statement made by the Assistant General Manager of the 3rd respondent-bank to the police officials, that respondents 4 and 5 had created sale deeds, by affixing photographs of some other persons, by impersonating them and bringing fake deeds into existence, it would be wholly inappropriate for us to give a conclusive finding on these issues, as the petitioners' claim petition is still pending adjudication before the Tax Recovery Officer.

Sri M.V.Durga Prasad, learned counsel for the petitioners, would submit that the Tax Recovery Officer is indulging in needless procrastination, and has adjourned hearing of the claim petition from 04.10.2018 till 13.12.2018; the matter is being deferred time and again only for a counter to be filed by the 3rd respondent-bank; since the order of attachment is causing the petitioner substantial prejudice, they be permitted to furnish a bank guarantee for the loan amount; and the attachment order be lifted enabling them to alienate the subject property.

Under Rule 11(1) of Schedule-II to the Income Tax Act, 1961, where any claim is preferred to, or any objection is made to, the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed and investigate the claim or objection. Though the petitioners are said to have filed a claim petition as early as on 11.03.2018, the said application has not been decided till date.

Sri B.S.Prasad, learned counsel appearing on behalf of the 3rd respondent-bank, would submit that the 3rd respondent-bank would file its counter to the claim petition within three weeks from today. Recording the submission of Sri B.S.Prasad, learned counsel for the 3rd respondent-bank, in this regard, suffice it to permit the petitioners to file an application to the Tax Recovery Officer to advance their claim petition; and

to direct the 2nd respondent herein to dispose of the said claim petition filed by the petitioners at the earliest and, in any event, on or before 30.11.2018.

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

08th October, 2018
JSU

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

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Date: 08.10.2018

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