THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.37613 OF 2018

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

The petitioners claim to be in possession of the subject land, for which a recovery certificate was issued by the Debts Recovery Tribunal, Visakhapatnam (DRT) in O.A.No.290 of 2002 dated 06.10.2006. Pursuant to the recovery certificate issued by the DRT, an auction was held to take possession of the subject land. The petitioners are aggrieved thereby.

On a recovery certificate being issued, the provisions of Chapter V of the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993 ("the 1993 Act" for brevity) are attracted, and Section 29 thereunder makes the provisions of Schedule II of the Income Tax Act, 1961 applicable as if the said provisions and Rules refer to the amount of debt due under the 1993 Act instead of the Income Tax Act.

In terms of Rule 11(1) of Schedule II, if 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 to investigate the claim or objection. The petitioners herein have the remedy of making a claim before the Tax Recovery Officer under Rule 11(1) of Schedule II to the Income Tax Act.

Sri J.Satya Prasad, learned counsel for the petitioners, would submit that the petitioners are likely to be forcibly vacated in the next couple of days, and unless the petitioners are protected for some time, they would not be able to approach the Tax Recovery Officer under Schedule II of the Income Tax Act, and make a claim before him.

While we see no reason to entertain the Writ Petition since all the factual contentions urged by the petitioners can be appropriately examined by the Tax Recovery Officer under Schedule II to the Income Tax Act, suffice it to direct the respondents not to initiate coercive proceedings for a period of ten days from today to enable the petitioners to approach the Tax Recovery Officer in the meanwhile. It is made clear that, after the aforesaid period of ten days, it is open to the respondents to proceed, and take action in accordance with law, unless they are restrained from doing so by the Tax Recovery Officer.

Subject to the aforesaid observations, the Writ Petition 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)

12th October 2018

NOTE: Issue CC by Monday
B/O
RRB