

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.39120 OF 2018

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

Heard Sri Rajagopallavan Tayi, learned counsel for the petitioner and Sri V.Raghu, learned counsel for respondents 1 and 2 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 sale notice dated 24.09.2018 issued under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 ("the SARFEASI Rules" for brevity) fixing the date of auction as 31.10.2018.

After arguing for some time, Sri Rajagopallavan Tayi, learned counsel for the petitioner, would submit that the petitioner has approached a financial institution which has agreed to extend a term loan to the petitioner, which would enable them to repay the entire dues of respondents 1 and 2; the said financial institution has agreed to extend the loan by 08.11.2018; and if, in the meanwhile, the sale is confirmed the petitioner would suffer irreparable loss and injury. Sri V.Raghu, learned counsel for respondents 1 and 2, would place reliance on a newspaper report dated 30.10.2018 to submit that the financial corporation, which the petitioner claims to have approached, is bogus; it has duped several customers; a criminal case has been registered against them; there is no possibility for the petitioner to secure any loan from this corporation; the petitioner approached the Debts Recovery Tribunal, Hyderabad (DRT) by filing S.A.No.245 of 2018;

in its order in I.A.No.3013 of 2018 dated 04.07.2018, the DRT granted stay of registration of the sale certificate on condition that the petitioner deposited 30% of the total outstanding dues in two instalments; the first instalment of 15% was required to be deposited within ten days, and the second instalment of 15% was required to be deposited within two weeks thereafter; though nearly four months have elapsed since the date of the order of the DRT, the petitioner has not paid a single rupee; and their past conduct belies the submission that the entire dues would be paid by 10.11.2018. In reply Sri Rajagopallavan Tayi, learned counsel for the petitioner, would submit that the petitioner undertakes to pay the entire dues of respondents 1 and 2, inclusive of interest, costs and other expenses, latest by 10.11.2018; as the auction is scheduled to be held today, this Court may consider restraining the respondents from confirming the sale for a period of ten (10) days; and in case the petitioner fails to pay the entire dues, inclusive of interest, costs and other charges, on or before 10.11.2018, the respondents be permitted to confirm the sale, and register the sale certificate.

While the previous conduct of the petitioner, and their failure to comply with the interim order passed by the DRT in I.A.No.3013 of 2018 in S.A.No.245 of 2018 dated 04.07.2018, makes their claim of repaying the entire debt due to the respondents by 10.11.2018 suspect, the SARFAESI Rules stipulate a period of fifteen (15) days from the date of the auction for the auction purchaser to remit the balance sale consideration. No prejudice would be caused either to the bank, or to the auction purchaser, if the auction is permitted to go on, the sale in favour of

the highest bidder is directed not to be confirmed till 10.11.2018, and respondents 1 and 2 are directed to refrain from collecting the balance 75% sale consideration from the auction purchaser till then. Suffice it to make it clear that, in case the petitioner fails to pay the entire debt due to the respondents with interest, costs and other charges on or before 10.11.2018, it would be open to the respondents to proceed and confirm the sale in favour of the highest bidder, issue a sale certificate to him, and register the said sale certificate in accordance with law. Needless to state that, since this order is passed on the basis of the solemn undertaking furnished by the petitioner, violation of the undertaking would also attract the provisions of the Contempt of Courts Act, 1971.

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



(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

31st October 2018

NOTE: Issue CC today
B/O
RRB