* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.40806 of 2018

% Date: 13-11-2018

1. Smt. Y.Raja Rajeswari D/o Janaki Ramayya, Aged 51 years,
Occ: Business, R/o Janaki Ramayya Estates,
Ganguru, Penamaluru Mandal, Vijayawada-521 139

2. Yerneni Janaki Ramayya S/o Govindayya, Aged 79 years,
Occ: Business, R/o Janaki Ramayya Estates,
Ganguru, Penamaluru Mandal, Vijayawada-521 139

... Petitioners

Vs.

$ 1. Debt Recovery Appellate Tribunal, 7th Floor, Main Road,
Lal Bazar, Kolkata-700 001, West Bengal

2. Debt Recovery Tribunal, Daba Gardens, 104 Area,
Visakhapatnam-530 020 (AP)

3. Andhra Bank, Nidamanuru Branch, Vijayawada-521 104 (AP),
Rep. by its Branch Manager

4. M/s. Model Steel (P) Ltd., Rep. by its Managing Director,
D.No.27-18-18/A, II Floor, Congress Office Road,
Governorpet, Vijayawada-520 002 (AP)

5. Tatineni Bhaskara Rao S/o Venkatappaiah,
R/o Pinnamaneni Teachers' Colony, Kanuru,
Vijayawada, Krishna Dist (AP)

6. Pinnamaneni Krishna Mohan S/o Dasaratha Ramiah,
Teachers' Colony, Behind SBI, Autonagar Road,
Vijayawada-520 008 (AP)

... Respondents

! Counsel for Petitioners: Mr. Prem Kumar Pothina

Counsel for Respondents 1, 2 & 4to6 : ---

Counsel for Respondent No.3: Smt. V.Dyumani, Standing Counsel

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> Head Note:

? Cases referred:
Nil.

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Order: (per V.Ramasubramanian, J.)

Persons who have purchased the secured assets in an auction conducted under the Securitisation Act, 2002, have come up with the above writ petition challenging an interim order passed by the Debts Recovery Appellate Tribunal on an appeal filed by the Bank.

2. Heard Mr. Prem Kumar Pothina, learned counsel for the petitioners. Smt. V.Dyumani, learned Standing Counsel, takes notice for the 3rd respondent/Bank.

3. It appears that the Company who borrowed money from the Bank went into liquidation and it was ordered to be wound up by the Company Court in Company Petition No.105 of 2002. Thereafter, the Bank filed an application in O.A.No.54 of 2004 before the Debts Recovery Tribunal. During the pendency of the said application, the secured assets were brought to sale. In the auction held on 16-01-2006, the petitioners became the highest bidders and they made payment of Rs.6,11,11,116/-. A sale certificate was also issued on 19-6-2007 and possession was delivered on the same date. The sale certificate was registered on 20-6-2007.

4. The sale notice was challenged thereafter by the borrowers in an appeal under Section 17 of the Securitisation

Act, 2002, in S.A.No.78 of 2007. Similarly, another appeal in S.A.No.70 of 2005 was also filed as against the sale notice. Thus, there were two appeals as against the sale notices and one original application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5. Therefore, all of them were taken together and the Debts Recovery Tribunal passed a final order on 30-5-2018 disposing of all the applications.

6. In O.A.No.54 of 2004, the Tribunal awarded interest at a particular rate. Contending that the Tribunal has no power to reduce the rate of interest, the Bank has gone on appeal to the Debts Recovery Appellate Tribunal in Appeal No.157 of 2018. This appeal filed by the Bank in Appeal No.157 of 2018 is confined only to the final order passed in O.A.No.54 of 2004 and that too relating only to the rate of interest. In that appeal, the borrowers appear to have offered some payments. The Debts Recovery Appellate Tribunal passed an interim order directing the Bank to accept the cheques without prejudice to the contentions of the Bank. The interim order passed by the Bank is a very short order, which reads as follows:

> "The Appellate Tribunal: Learned counsel for the appellant submits that the borrowers have tendered some cheques towards outstanding loan but bank has challenged the impugned order to the extent of rate of interest. So cheques were not received otherwise the rights of the bank may be prejudiced.
>
> Learned counsel for the respondent submits that he is not aware of the factum of tender of cheques. However,

if the cheques have been tendered the amount may be appropriated as the Tribunal deems proper.

It appears that in this appeal the appellant bank has challenged only the order qua reduction of interest rate. Since the borrowers are ready to pay the outstanding, it is in the fitness of the things to direct the appellant bank to accept the cheques as submitted by the borrowers and adjust the amount in the loan account. However, receipt of the cheque and payment thereof shall be without prejudice to the rights and contentions made by the appellant in this appeal.

List the case on 05-10-2018.

Meanwhile, copy of the Memorandum of Appeal be served to the learned counsel for the respondents."

7. It is against the said order that the purchasers have come up with the above writ petition.

8. At the outset, we are unable to understand how the auction purchasers are aggrieved by this order. The Debts Recovery Appellate Tribunal has not passed any order affecting the rights of the petitioners as auction purchasers. As a matter of fact, the very same order passed by the Debts Recovery Tribunal on 30-5-2018 in S.A.No.78 of 2007 has been challenged by the petitioners herein in a writ petition W.P.No.21363 of 2018. In the said writ petition, this Court has granted an order of protection to the auction purchasers. The interim order passed in that writ petition reads as follows:

"As it is stated that the petitioners have been in possession of the secured assets since its sale in the year 2006, we are of the opinion that their possession should not be disturbed pending examination of the issues that arise for consideration in this case.

> There shall accordingly be a direction to maintain *status-quo* as regards possession in relation to the property sold by the Andhra Bank which is presently with the petitioners. However, they shall not encumber or alienate the said property pending further orders.
>
> There shall also be a further direction not to register the sale certificate which is pending registration with document No.P 645/2007 on the file of the Sub-Registrar, Gunadala, Vijayawada."

9. The contention of the learned counsel for the petitioners is that when the very same order of the Debts Recovery Tribunal is the subject matter of challenge in a writ petition before this Court and when this Court has granted an interim order of *status quo*, the Debts Recovery Appellate Tribunal could not have passed an interim order crating substantial rights on the borrowers.

10. But we do not agree. What is protected by the interim order of this Court is only the possession granted to the petitioners. In fact, what is under challenge before the Appellate Tribunal in Appeal No.157 of 2018 is only the rate of interest awarded in O.A.No.54 of 2004. The interim order now under challenge is not passed on any other appeal that arises out of the auction sale. If the Appellate Tribunal has passed any order in any appeal arising out of the auction proceedings, then the same would have led to different people approaching different forums against the very same order. In fact, the interim arrangement now ordered by the Debts Recovery Appellate Tribunal does not in any way prejudice the rights of the petitioners. The order of the Debts Recovery

Tribunal dated 30-5-2018 passed in S.A.No.78 of 2007 prejudiced the case of the petitioners and that is why they are before this Court in a writ petition. Therefore, the interim arrangement made as between the Bank and the borrowers in an appeal that is confined only to the rate of interest, without reference to the auction proceedings, cannot take away the rights of the petitioners.

11. At any rate, it is stated by the learned Standing Counsel for the Bank that the cheques issued by the borrowers pursuant to the impugned interim order already bounced. Therefore, the petitioners can have no more grievance. Hence, the writ petition is dismissed. Pending applications, if any, shall stand closed. No costs.

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V.RAMASUBRAMANIAN, J.

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J.UMA DEVI, J.

13th November, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.40806 of 2018
(per VRS, J.)

13th November, 2018.
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