THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.38284 OF 2017

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner company in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the auction Notice dated 19.09.2017 which is scheduled to be held on 26-10-2017, in respect of the immovable properties of the Petitioner Company which were illegally mortgaged by Mr.Mustafa A vali and Mr.Idris A Vali, directors of the Respondent Nos. 2 & 3 herein, (who are also directors of the Petitioners Company herein) for the loan availed by M/s. Seiris Flex India Pvt., Hyderabad, from the Respondent No.1 bank, as Corporate Guarantee, without obtaining the consent of Mrs.Sharmlla Agarwal, who is also the director of the Petitioner Company and having 50% of share in the said Petitioner's Company, without taking any steps against the Principal Creditors is contrary to the provisions of the SARFEASI Act 2002, as illegal, arbitrary and unconstitutional and being violative of Articles 14 and 300-A of the Constitution of India and set aside the same and consequently (1) set aside the Auction Notice given under Rule 8(6) of SARFAESI ACT, 2002 dated 19.09.2017 for auctioning of the Corporate Guarantor petitioner's property issued by the 1st respondent bank to the petitioner (2) suspend the operation of the conditional stay order of the Debts Recovery Tribunal, Hyderabad, dated 25.10.2017 subject to depositing of Rs.40,00,000/- in two equal instalments, first installment of Rs.20,00,000/- to be deposited on are before the time and date of auction i.e., on 26.10.2017 and the second installment of Rs.20,00,000/- within two weeks thereafter, in the event of failure of compliance of any of the afore said conditions, the interim stay shall stand vacated (3) direct the 1st respondent to deliver the possession of the Petitioner property which was seized on 06-11-2017 without due process of law is contrary to the SARFAESI ACT, 2002 without issuing any fresh notice for auction and pass such other order or orders may deem fit and proper in the circumstances of the case."

The thrust of the aforestated prayer is directed against the auction notice dated 19.09.2017, whereunder the Karur Vysya Bank Limited, the first respondent herein, proposed to hold the auction sale of the petitioner company's properties on 26.10.2017.

Sri P.Rajesh Babu, learned counsel for the Karur Vysya Bank Limited, would inform this Court that the said auction sale failed to materialise for want of bidders.

In effect, the prayer in this writ petition has worked itself out. It may also be noted that the petitioner company already approached the Debts Recovery Tribunal-I, Hyderabad, by way of S.A.No.327 of 2017 aggrieved by the proceedings initiated by the first respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the said S.A. is still pending consideration.

Sri Raghavan K. Thalapaka, learned counsel for the petitioner company, would however submit that the petitioner company has now filed I.A.No.2 of 2018 in this writ petition in relation to the subsequent e-auction sale notice dated 11.01.2018 issued by the first respondent bank proposing to conduct e-auction on 16.02.2018. Learned counsel would therefore state that this issue may be considered in the present writ petition.

However, given the fact that the prayer in the main case was limited to the auction notice dated 19.09.2017, pursuant to which the auction sale was held on 26.10.2017 and came to naught for want of bidders, we are of the opinion that the scope of the writ petition cannot be enlarged beyond the main prayer by way of an interlocutory application. In the event, the petitioner company has any grievance with regard to the subsequent sale notice, its remedy lies elsewhere.

The writ petition is accordingly dismissed leaving it open to the petitioner company to pursue appropriate remedies in accordance with law, if so advised, in relation to the subsequent e-auction sale notice.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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P. KESHAVA RAO,J

Date: 07.02.2018
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