

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

+ Writ Petition No.39080 of 2017

% Date: 12-4-2018

M/s. Radha Devi Industries, Rep. by its Managing
Partner B.Radha Krishna, Plot No.97, APIIC,
ADB Road, Peddapuram, East Godavari District
... Petitioner
Vs.

\$ 1. Bank of India, Suryaraopeta Branch,
D.No.5-1-65, 1st Floor, Srinivasa Complex,
Opp. Care Hospital, II Town Main Road,
Kakinada, East Godavari,
Rep. by its Authorised Officer
2. Star Steels, Rep. by its Partner
Liyakhatap Ali Khan, S/o. Mohmood Khan,
Auto Nagar Area, Vijayawada, Krishna District
... Respondents

! Counsel for Petitioner: Mr. G.Vasantha Rayudu

Counsel for Respondent No.1: Smt. T.Vidya Rani,
Standing Counsel

Counsel for Respondent No.2: Mr. V.S.R. Anjaneyulu

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> Head Note:

? Cases referred:
Nil.

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

Writ Petition No.39080 of 2017

Order: (per V.Ramasubramanian, J.)

Challenging the auction of the plant and machinery held on 15-11-2017, the borrower has come up with the above writ petition.

2. Heard Mr. G.Vasantha Rayudu, learned counsel for the petitioner, Smt. T.Vidya Rani, learned Standing Counsel for the 1st respondent/Bank and Mr. V.S.R. Anjaneyulu, learned counsel for the 2nd respondent/auction purchaser.

3. After classifying the account of the petitioner as a non-performing asset, the Bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 09-10-2015. It was followed by a possession notice dated 06-01-2016 under Section 13(4) of the Act.

4. The Bank also proposed to conduct an E-Auction on 30-3-2016, in respect of both plant and machinery and land. But there were no bidders and hence the next date of sale was fixed on 22-8-2016 which got postponed to 29-8-2016.

5. Challenging these measures, the petitioner filed an appeal in S.A.No.315 of 2016 on the file of the Debts Recovery Tribunal. Along with the appeal, the petitioner took out an application in I.A.No.791 of 2016 for stay. The Tribunal passed a conditional order on 28-12-2016, but

the same was not complied with. Therefore, the Bank claims to have taken physical possession through the District Magistrate on 22-4-2017.

6. In the meantime, the petitioner filed an application I.A.No.1597 of 2017 in S.A.No.315 of 2016 for redemption. While that application was pending, the Bank proceeded to put up the plant and machinery for sale by invoking the necessary clause contained in the Hypothecation Agreement. A Tender Notice was issued on 07-11-2017. The auction was fixed for 15-11-2017.

7. Therefore, the petitioner moved an application in I.A.No.1661 of 2017 in S.A.No.315 of 2016 for a stay.

8. On 15-11-2017, the Tribunal dismissed I.A.No.1597 of 2017 filed by the petitioner for redemption. But in the application for stay of auction of the plant and machinery viz., I.A.No.1661 of 2017, the Tribunal passed an order to the following effect:

“Counter not filed. Time extended for counter and hearing.
SA for carrying out amendment and neat copy of SA posted
to 01-12-2017.”

9. In view of the aforesaid order, the Bank proceeded to conduct the auction of plant and machinery on 15-11-2017. Therefore, the petitioner came up with the above writ petition W.P.No.39080 of 2017.

10. Though the petitioner filed the writ petition on 17-11-2017, it was listed for hearing on 20-11-2017 and at the request of the learned Standing Counsel for the Bank it

was adjourned to 27-11-2017. On 27-11-2017, this Court granted an interim direction as prayed for, in W.P.M.P. No.48474 of 2017. The prayer in this petition was to direct the respondents not to dismantle and not to take away the plant and machinery.

11. But the Bank as well as the 2nd respondent have now come up with counter affidavits contending, *inter alia*, that pursuant to the auction held on 15-11-2017, the entire bid amount was deposited on 18-11-2017 and the 2nd respondent also lifted part of the machinery. The other part of the machinery could not be lifted due to a police complaint given by the petitioner.

12. In other words, the interim order passed by this Court on 27-11-2017 cannot today be worked out in its full sense. If it has to be worked out this Court has to either direct the 2nd respondent to bring back the machinery and direct the Bank to repay the money to the 2nd respondent. Or in the alternative, this Court has to allow the machinery already lifted by the 2nd respondent to remain with him and the rest of the machinery to remain with the petitioner. Either of options is not feasible, in view of the fact that by the time an interim order was passed, much water has flown under the bridge.

13. The main grievance of the petitioner is that the plant and machinery worth over Rs.1,24,25,000/- even according to the Bank's own valuation, was sold for a song viz.,

Rs.41,45,000/-. In other words, the main grievance of the petitioner is that the value for which the machinery was sold, was nowhere near the market value.

14. But unfortunately the petitioner himself, when he offered a one-time settlement proposal, described the machinery as obsolete. At least the Bank was kind enough to value it as Rs.1,24,00,000/-. Therefore, we do not know how such a contention can now be raised by the petitioner.

15. It is true that when an application in I.A.No.1661 of 2017 was moved before the date of the auction and when the Bank took time to file counter, the Bank should not have confirmed sale and taken the entire money. They could have waited for the Tribunal to pass orders on the application for stay in I.A.No.1661 of 2017.

16. If things beyond the control had not happened, we could have put on hold further proceedings pursuant to the auction and directed the Debts Recovery Tribunal to dispose of I.A.No.1661 of 2017. But today, we are unable to do so, partly because of the mistake of the petitioner himself, though we do not approve the action of the 1st respondent/ Bank also, in proceeding with the confirmation of sale after taking time for counter in the application for stay.

17. Therefore, in fine, the writ petition is dismissed. It will be open to the petitioner to raise all the issues before the Tribunal in the pending appeal. The miscellaneous

petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

12th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.39080 of 2017
(per VRS, J.)



12th April, 2018.
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