HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.1199 of 2019

ORDER: *(per V. Ramasubramanian, J)*

1) The Telangana State Civil Supplies Corporation Limited has come up with the above writ petition challenging an e-auction notice issued by the State Bank of India under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act").

2) Heard Mr.A.Jagan, learned counsel for the petitioner-Corporation, Mr.M.Srikanth Reddy, learned counsel appearing for the 1st respondent-bank and Mr.V.Ravi Kiran Rao, learned counsel appearing for the 2nd respondent-borrower.

3) The 2nd respondent herein availed credit facilities from the 1st respondent bank in the year 2014 and created an equitable mortgage of certain immovable properties including the rice mill with plant and machinery and certain other lands, on 30.06.2014. Since the 2nd respondent became irregular in repayment, the account was classified as non-performing asset on 28.06.2016. A demand notice was issued on 13.07.2016 under Section 13 (2) of the Securitization Act. It was followed by a possession notice dated 28.11.2016 under Section 13 (4) of the Securitization Act.

4) A sale notice was issued on 30.10.2018 under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules") followed by a publication under Rule 9 (1) of the Rules. The auction was held on 31.01.2019 in which 14 persons participated. The bank received the highest bid of Rs.6,85,00,000/- towards land, building, plaint and machinery, from one Mr.T.Chandra Mohan Goud. The highest bidder paid 25% of the amount immediately.

5) Upon coming to know of the same, the petitioner-Corporation came up with the above writ petition contending that for the value of the paddy entrusted by the Corporation to the 2nd respondent for milling, the 2nd respondent became liable to pay a huge amount of money and that therefore for the recovery of the said amount, proceedings under the Revenue Recovery Act had already been initiated and necessary orders of attachment already passed. Therefore, it is claimed by the petitioner-Corporation that they have a priority in terms of the Andhra Pradesh Revenue Recovery Act, 1864 and that therefore the property cannot be sold.

6) On 24.01.2019 when the writ petition came up for admission, we granted a limited interim order permitting the bank to proceed with the auction but not to confirm it. It is only in pursuance of the said interim order the bank proceeded with the auction on 31.01.2019. By an interim order dated 24.01.2019, we also directed the petitioner-Corporation to indicate the time required for them to remove their material which is inside the godown.

7) But the petitioner-Corporation came up with a contention that it is the value of the stock that is payable to them and that the removal of the stock may not satisfy the total amount sought to be recovered under the Andhra Pradesh Revenue Recovery Act.

8) At the same time the bank also came up with a counter affidavit contenting *inter alia* that the auction fetched a total amount of Rs.6,85,00,000/- and that the dues recoverable by the bank was only Rs.5,70,97,834/- and the bank conceded that they were left with surplus of Rs.1,14,02,166/-. The bank expressed willingness to pay this amount to the petitioner-Corporation.

9) However, the petitioner-Corporation contended that the amount for which orders of attachment in Form No.5 had already been issued, was to the tune of Rs.1,78,85,435/- and that the amount agreed to be paid by the bank falls short of the amount actually recoverable by the petitioner-Corporation. In the light of this stalemate we passed another order on 19.02.2019 which reads as follows:

> "State Bank of India has filed a counter affidavit today. In the counter affidavit it is stated that two out of three properties mortgaged to the bank were sold by the bank in an auction under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act") and that a total amount of Rs.6,85,00,000/- was realized. After adjusting the total dues of the bank to the tune of Rs.5,70,97,834/- the bank is now left with an excess amount of Rs.1,14,02,166/-. The bank has no objection to the payment of this amount to the petitioner-Corporation, if the Court so directs.

But according to Mr.A.Jagan, learned counsel for the petitioner-Corporation, the notice issued under the Revenue Recovery Act indicates a total amount of Rs.1,78,85,435/- as due and payable to the Corporation. This amount represents the stock of paddy belonging to the Civil Supplies Corporation which was entrusted to the borrower. Therefore, it is his contention that the amount now offered by the bank may not be sufficient to meet the total liability to the Corporation.

But the fact remains that there could be stock belonging to the Civil Supplies Corporation now lying in the rice mill. If there is stock, the same may belong to the Corporation and may not have been hypothecated to the bank. If that is so, the Corporation could remove the stock, arrive at a valuation so that the same can be appropriated towards the dues indicated in the notice issued under the Revenue Recovery Act. Once this is done, the amount payable by the bank from out of the excess to the petitioner-Corporation will become lesser. Therefore, in order to find out whether there is stock available and to find out its valuation, an inspection is to be conducted. Therefore, the following order is passed as an interim measure.

(1) The District Manager of the Civil Supplies Corporation who is the petitioner, shall conduct an inspection of the rice mill belonging to the second respondent which is now brought to sale by the bank, in the presence of the Authorised Officer of the State Bank of India and the Managing Partner of the second respondent-firm.

(2) The inspection shall take place on 23.02.2019 from 10.00 a.m., onwards. All the parties to the writ petition shall take this order as the notice of inspection.

(3) After inspection, the District Manager of the Corporation who is the petitioner herein shall arrive at a valuation. The parties shall prepare a memo on the very same day indicating the total quantity of stock, the condition of stock and the probable valuation arrived at. Thereafter, either the petitioner-Corporation or the first respondent-bank shall file a report before this Court on 26.02.2019.

Post on 26.02.2019."

10) Pursuant to the said order an inspection was carried out. The report is filed today, according to which the value of the paddy now lying inside the godown is only Rs.60,900/-. Therefore the liability of the 2nd respondent to the writ petitioner has come down only marginally.

11) It is admitted by Mr.M.Srikanth Reddy, learned counsel appearing for the bank that there is one more property under mortgage to them and that therefore the bank is prepared to pay from out of the sale proceeds, the entire amount for which an attachment has been issued by the Corporation, if liberty is granted to the bank to proceed for the sale of the other property.

12) Fortunately the 2nd respondent-borrower is also a party here. The 2nd respondent has not come up with any objection to the claim of the petitioner-Corporation. All that the 2nd respondent states is there was a one time settlement proposal once upon a time. Therefore, they wanted to pursue the same. But it appears that the one time settlement proposal made in August, 2018

worked itself out due to efflux of time. Therefore, the entire stalemate has to be resolved only in one way.

13) In the light of the above, the writ petition is disposed of with the following directions.

(1) The bank shall issue a letter of confirmation of sale to the highest bidder within two days, directing the highest bidder to pay the balance of 75% of the sale consideration within 15 days from the date of confirmation as required by the Rules.

(2) Upon receipt of the balance 75% of the sale consideration from the highest bidder, the bank shall pay the amount of Rs.1,78,24,535/- to the petitioner-Corporation.

(3) The petitioner-Corporation is permitted to remove the paddy lying inside the godown within one week.

(4) The remaining amount lying with the Bank is permitted to be appropriated towards the dues and the bank is permitted to proceed with the issue of sale certificate and the registration thereof.

(5) In respect of the short fall, the bank is permitted to proceed as against the other mortgaged property.

14) As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

February 26, 2019
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Date: 26.02.2019

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