

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.1317 of 2019

ORDER: (per Hon'ble Sri Justice V.Ramasubramanian)

Seeking to set aside an auction sale and also praying for refund of the money paid, the highest bidder in the auction under the SARFAESI Act, 2002, has come up with the above Writ Petition.

Heard Mr.Singam Srinivasa Rao, learned Counsel for the petitioner and Mr.Podila Hari Prasad, learned Standing Counsel for the respondent – Bank.

In an auction conducted on 26.11.2018, the petitioner became the successful bidder. Subsequently, it was found out that there was an order of attachment of the very same property, by a Civil Court in a suit filed by a third party. The order of attachment, according to the petitioner, was subsisting on the date of the sale. Therefore, the petitioner, who is the auction purchaser, has come up with the above writ petition seeking cancellation of the sale and refund of her money.

According to Mr.Podila Hari Prasad, learned Standing Counsel for the respondent – Bank, the auction held on 26.11.2018 was already cancelled and a fresh auction was held and a sale certificate was also issued in favour of another party.

According to the learned Standing Counsel for the respondent – Bank, the petitioner is not entitled to refund of the money, as the money paid by her has already been forfeited for non-compliance of the condition.

But, it is admitted by the learned Standing Counsel for the Bank that in I.A.No.174 of 2016 in O.S.No.99 of 2016, a third party has secured an order of attachment of the very same property. In fact, the trial Court refused to grant an order of attachment, but on a revision in C.R.P.No.5137 of 2016, this Court granted an order of attachment on 17.11.2016.

Therefore, it is clear that on the date on which the auction was held on 26.11.2018, there was an order of attachment. It is true that the order of attachment passed by a Civil Court, during the subsistence of a mortgage will not impact the mortgage and will not affect the rights of the Bank to bring the property to sale. But, in this writ petition, we are not deciding the right of the Bank vis-à-vis the borrower. The question that should be considered in this writ petition, is as to whether the auction purchaser was entitled to have notice of the order of attachment that was in force on the date of the sale or not? The answer to this question could only be in the affirmative. The auction purchaser is entitled to know the encumbrance created on the property by a competent Civil Court before taking part

in the auction. Since that opportunity was not available to the petitioner, the petitioner is entitled to refund of the amount.

Therefore, the Writ Petition is allowed directing the respondents to refund the amount paid by the petitioner, within a period of two weeks from the date of receipt of a copy of this order. No order as to costs.

Consequently, miscellaneous petitions, if any pending, in the Writ Petition shall stand closed.

A large, faint, circular watermark seal of the High Court for the State of Telangana, Hyderabad, is centered in the background. It features the text "HIGH COURT FOR THE STATE OF TELANGANA" around the top and "HYDERABAD" around the bottom, separated by stars. In the center is the State Emblem of India, with the motto "Satyameva Jayate" in Devanagari script below it.
V.RAMASUBRAMANIAN, J

Dr.SHAMEEM AKTHER, J

18.02.2019
Gsn.