HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4058 of 2019

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

Challenging the rejection of One Time Settlement proposal and an auction proposed to be conducted, in terms of the Security Interest (Enforcement) Rules, 2002, the petitioners came up with the above Writ Petition.

2. The auction was scheduled to be held on 28.02.2019. On 27.02.2019, this Court passed an interim order to the following effect:

> "Mr.R.Raghunandan, learned Senior Counsel appearing for the petitioner, has initially raised the plea that mandatory provisions of the Security Interest (Enforcement) Rules, 2002, namely Rule 8 and Rule 9 have not been followed by the Bank.
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> Subsequently, he has pleaded that according to the letter, dated 17.08.2018, the Bank had agreed to accept the "One Time Settlement" (OTS) amount, namely Rs.2,25,24,177/- provided that the petitioner deposits 5% of the said amount i.e., Rs.11,26,209/- and subsequently, deposits 20% of the remaining OTS amount within thirty days.
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> According to the learned Senior Counsel, the petitioner did deposit 5% of the OTS amount, however, he failed to deposit 20% of the OTS amount within the stipulated period of thirty days.
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> Furthermore, according to the learned Senior Counsel, the petitioner is willing to deposit the entire remaining amount out of Rs.2,25,24,177/- on or before March 29th, 2019. Therefore, according to the learned Senior Counsel, it would be in the interest of the Bank, itself, to accept the OTS amount, instead of going for the auction process, where the reserve price is kept as low as Rs.1,15,00,000/-.
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> He further pleads that even on an earlier occasion, when the auction was held by the Bank, the auction did not go through, as no reasonable bid was made for the property in dispute. Therefore, according to the learned Senior Counsel, the offer made by the petitioner should be more

> acceptable to the Bank rather than going for the second time for an auction.
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> On the other hand, Mr.M.Srikanth Reddy, the learned counsel for the Bank, has vehemently contended that since the petitioner failed to adhere to the schedule for repayment of the OTS amount, the Bank was justified in rejecting the offer made by the petitioner, and in scheduling the auction for 28th of February, 2019.
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> This Court is of the opinion that in financial matters, especially where the bank should be more interested in recovering the loan amount than in the technicalities of the law, it would be in the interest of the bank itself to accept the OTS amount which the petitioner is promising to pay on or before March 29th, 2019. As it is, the bank had tried to put the property on the auction block on an earlier occasion, but failed to realize the reserve price. Moreover, there is no guarantee, even presently, that the Bank would realize the reserve price. Furthermore, while keeping the petitioner at bay, the property will only deteriorate by afflux of time.
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> Once these factors were pointed out to the learned counsel for the respondent-Bank, he seeks one day's time to get instructions from his party.
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> Considering the fact that there is a genuine and fruitful proposal from the petitioner, considering the fact that the Bank may require some time to consider the proposal, the auction scheduled to be held on 28th of February, 2019, is hereby stayed till the next date.
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> List this case on 05.03.2019."

3. As a result, the auction could not proceed. Hence the Bank has come up with an application for vacating the interim order.

4. Heard Mr.R.Raghunandan, learned Senior Counsel for the petitioners and Mr.Srikanth Reddy, learned Standing Counsel for the Bank.

5. Insofar as the auction that was scheduled to be held on 28.02.2019 is concerned, the same got interdicted due to the interim order passed on 27.02.2019. Though the learned Counsel for the bank submitted that bids were in fact received on 27.02.2019 and that if the interim stay granted is vacated, the bank could proceed to confirm the sale, we do not think that it is possible. The last day and time for receipt of bids was 27.02.2019

at 04.00 p.m. But the interim Order was passed on 27.02.2019, obviously in the forenoon. Therefore, it is not possible for us to allow the bank to finalize the auction as though it happened on 28.02.2019.

6. In fact, insofar as the second portion of the prayer made in the Writ Petition is concerned, the Writ Petition has become infructuous. On the first portion of the prayer, a decision will be of academic interest, since the appeal filed by the petitioners under Section 17 is pending before the Debts Recovery Tribunal. The Debts Recovery Tribunal is not posted with these developments. Therefore, we do not wish to go into the question of One Time Settlement. Hence, the Writ Petition is dismissed as infructuous.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 5, 2019
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