

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

WRIT PETITION NO.4106 OF 2018

ORDER

(Per Honourable Sri Justice M.S.Ramachandra Rao)

Heard Sri Ambadipudi Satyanarayana, learned counsel for the petitioner.

2. None appears for the respondent and the notice in this Writ Petition taken by registered post with acknowledgement due by the petitioner to the respondent is returned with endorsement 'unclaimed'. Therefore, the respondent is deemed to be served.

3. The Writ Petition is filed challenging the order dt.22.01.2018 in S.A.No.335 of 2014 of the Debts Recovery Tribunal-I at Hyderabad, wherein the respondent had questioned under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act") the e-auction-cum-sale notice dt.27.03.2014 issued by the petitioner which was published in newspapers fixing the auction date as 30th April, 2014 against the property which is subject matter of the said S.A. and to set aside the same as illegal and void.

4. In the impugned order, the Tribunal had accepted the contention of the respondent that the petitioner Bank did not file proof of service of the possession notice under Section 13(4) of the SARFAESI Act dt.06.03.2014 and had also not filed proof of publication of the

possession notice in two leading newspapers including one in vernacular language.

5. Learned counsel for the petitioner bank contends that the findings of the Debts Recovery Tribunal are not correct and the petitioner bank had filed the acknowledgement card received of the postal cover sent to the respondent containing the possession notice dt.06.03.2014 under Section 13(4) of the SARFAESI Act. He also contended that in the reply affidavit filed before the Tribunal, it was specifically asserted that the possession notice was served on the respondent and that the publication of the possession notice in two leading newspapers was also carried out.

6. On the direction given by this Court, learned counsel for the petitioner has filed proof of publication of the possession notice dt.06.03.2014 in 'The Hans India' English daily newspaper and 'Vishalandhra' Telugu daily newspaper having circulation in Hyderabad on 11.03.2014.

7. Therefore, the finding recorded by the Tribunal that the petitioner had not complied with these two requirements cannot be sustained.

8. The Tribunal also held that the petitioner failed to file publication of e-auction-cum-sale notice in two leading newspapers for the auction to be conducted on 30th April, 2014.

9. Learned counsel for the petitioner contends that the said auction scheduled on 30th April, 2014 did not take place at all due to an interim order granted by the Tribunal and the S.A.No.335 of 2014 in fact

became infructuous on the said ground. According to the learned counsel for the petitioner, the sale took place subsequently and the petitioner Bank itself purchased the property.

10. We find considerable force in the contention of the learned counsel for the petitioner. If no auction took place pursuant to the said notice dt.27.03.2014 fixing the date of auction on 30th April, 2014, there is no occasion for the Tribunal to decide S.A.No.335 of 2014 and it ought to have dismissed the same as infructuous instead of allowing it as it did in the impugned order.

11. Therefore, the Writ Petition is allowed; order dt.22.01.2018 in S.A.No.335 of 2014 of the Debts Recovery Tribunal-I at Hyderabad is set aside; and the said S.A. is dismissed. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

13th NOVEMBER, 2019

Svv