

THE HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.11332 OF 2019

Date: 11.06.2019

Between:

M/s. Agarwal Reality Developers Private Limited,
Trendset Towers, Road No.2, Banjara Hills,
Rep. by its Director Sri Naveen Kumar Agarwal and others

... Petitioners

v.

State Bank of India, Stressed Assets Management Branch,
TSRTC Bus Station, Kachiguda, Hyderabad, rep. by
its Manager and others

... Respondents

For Petitioners : Mr. L. Ravi Chander for Mr. Mayur
Mundra

For Respondents : Mr. M. Srikanth Reddy

Gist :

Head Note :

Cases Referred :

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

7HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.11332 OF 2019

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

Aggrieved by the non-grant of an order of stay of the auction, the third party guarantors to a loan availed by the 2nd respondent from the 1st respondent bank have come up with the above writ petition.

2. Heard Mr. L. Ravi Chander, learned Senior Counsel for the petitioners. Mr. M. Srikanth Reddy, learned Standing Counsel takes notice for the 1st respondent bank.

3. The main grievance of the writ petitioners is that by a notice published on 09.05.2019, the 1st respondent Bank brought the properties of the petitioners to sale in an auction scheduled to be held on 29.05.2019 and that their application for stay before the Tribunal was first adjourned to 06.06.2019 without any interim order and later adjourned to 17.06.2019, for counter of the 1st respondent bank and for service of notice on the other respondents, thereby making the prayer for interim relief infructuous.

4. But, it is seen from the auction notice that the same is the second or subsequent notice. This is in view of the fact that the date of publication of the notice is 09.05.2019 and the date of auction was fixed as 29.05.2019. We do not know what has happened to the earlier notice of auction and whether any appeal was filed as against

the same by the petitioners or the borrowers before the Debts Recovery Tribunal. Even the present appeal SA No.186 of 2019 was filed by the petitioners, challenging the auction notice dated 09.05.2019, only on 29.05.2019, the date fixed for auction. Therefore, the Tribunal was not inclined to grant *ex parte* stay but, ordered notice.

5. On 06.06.2019, when the matter came up, the Tribunal found that the other respondents were not served. According to the learned Senior Counsel for the petitioners, an endorsement has been made giving up respondents 4 to 10 and despite this fact, the Tribunal adjourned the case to 17.06.2019. The apprehension of the petitioners is that fifteen days period from the date of holding of auction, would expire on 13.05.2019 and that if the auction purchaser is issued with a sale certificate before 17.06.2019, their entire case may become infructuous. Another aspect argued by the learned Senior Counsel for the petitioners is that this property despite being the property of the third party guarantors has been included in the proceedings initiated before the NCLT under Section 7 of the IBC, 2016 and that therefore, by conducting this auction *de hors* the inclusion of this property in the resolution process, both the bank as well as the petitioners may suffer.

6. But, as we have pointed out earlier, the present writ petition is directed only against an order of the DRT adjourning the application for stay on 17.06.2019. The argument that by 17.06.2019 the application for stay will become infructuous, is unacceptable. The

date of auction was 29.05.2019 and the application for stay was moved only on that date. Therefore, the theory that the proceedings will become infructuous, should apply even to the date 29.05.2019. In any case, by their own contributory negligence, the petitioners cannot make an application for stay infructuous and shift the blame on the DRT. Therefore, we do not wish to interfere with the impugned order of the Tribunal.

7. Hence, the writ petition is dismissed. However, in view of the fact that the respondents 4 to 10 are given up, the Tribunal may take up the application for stay for hearing on 17.06.2019 and decide the same in accordance with law and on the merits. It is needless to say that anything happened in between, will be subject to the outcome of the stay petition.

The miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

June 11, 2019

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