

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.12835 AND 14111 OF 2018

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

Challenging an order of remand passed by the Debts Recovery Appellate Tribunal (DRAT), both the bank as well as an auction purchaser has come up with these writ petitions.

2. Heard Mr. A. Satyanarayana, learned counsel appearing for the bank, which is the petitioner in one writ petition; Mr. V. Gopala Rao Amancharla, learned counsel appearing for the auction-purchaser, who is the petitioner in another writ petition; and Mr. J.V. Suryanarayana, learned senior counsel appearing for the borrowers, who are respondents in both the writ petitions.

3. The borrowers, who are respondent Nos.3 to 6 in one writ petition and respondent Nos.2 to 5 in another writ petition, filed an application in S.A. No.568 of 2014 on the file of the Debts Recovery Tribunal (DRT), Hyderabad, under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002'), challenging an auction notice, dated 30.07.2014, proposing to bring the secured assets to sale on 02.09.2014. It may not be necessary to record all details, as they may be irrelevant for a consideration of the issues raised in these two writ petitions.

4. Suffice it to say that the auction proposed to be held on 02.09.2014 did not materialise. Therefore, even during the pendency of

S.A. No.568 of 2014, a fresh sale notice, dated 01.11.2014, was issued fixing the auction sale on 05.12.2014.

5. Admittedly, the borrowers, who were the applicants, filed various interlocutory applications before the DRT, which included an application in I.A. No.4941 of 2014 for amendment of the prayer so as to challenge the fresh notice.

6. Unfortunately, the person, who became the highest bidder in the auction held on 05.12.2014, instead of contesting the application S.A. No.568 of 2014 before the Tribunal, approached this Court by way of a writ petition in W.P. No.3381 of 2015 seeking a prohibition restraining the Tribunal from proceeding with the hearing of the appeal. The said writ petition was disposed of by a Bench of this Court by an order, dated 07.08.2015, directing the Tribunal to dispose of S.A. No.568 of 2014, after disposing of the interlocutory applications filed by the parties.

7. Pursuant to the said order, the Tribunal took up S.A. No.568 of 2014 and dismissed the same by an order, dated 23.01.2017 on various grounds. Challenging the said order of the DRT, the borrowers filed an appeal in Appeal No.32 of 2017 before the DRAT, Kolkata. On the sole ground that the application for amendment already pending before the Tribunal was not taken note of by the Tribunal before dismissing S.A. No.568 of 2014, the DRAT allowed the appeal by an order, dated 14.11.2017 and remanded the matter back to the DRT for a fresh disposal. It is against this order of remand passed by the DRAT that the

bank as well as the auction-purchaser have come up with these two writ petitions.

8. The only point that arises for consideration in these writ petitions is as to whether the order of remand was correct or not?

9. A careful look at the order of the DRT, dated 23.01.2017, shows that the DRT did not deal with the application for amendment. This is despite the fact that this Court, in its order, dated 07.08.2015, passed in W.P. No.3381 of 2015, directed the Tribunal to take up S.A. No.568 of 2014 after disposing of the interlocutory applications filed by both parties. Therefore, obviously there was an omission and it was this omission that prompted the DRAT to pass an order of remand.

10. It is contended by the learned counsel appearing for the bank and the auction purchaser that the borrowers, who filed several applications, pursued a few of the interlocutory applications but failed to pursue the amendment application and the failure on the part of the borrowers cannot be fastened on the Tribunal as though it was the failure of the Tribunal.

11. Let us assume for a moment that there was a failure on the part of the borrowers to pursue the amendment application. Even then, the Tribunal also had a duty to look at the pending interlocutory applications before disposing of S.A.No.568 of 2014. This is especially in view of the fact that this Court, by the order in W.P. No.3381 of 2015 had specifically directed the DRT to dispose of the interlocutory applications.

12. Assuming that the borrowers could have pursued their application for amendment, there is another way of looking at *viz.*, that the Tribunal could have looked into the pending applications before disposing of the appeal. If two such views are possible and the appellate Tribunal has chosen to adopt one view, the same cannot be the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, the writ petitions deserve to be dismissed.

13. But, in view of the fact that the sale certificate is stated to have been issued and registered, it will be ideal that the application, S.A. No.568 of 2014 is disposed of within a specified time frame. This is to ensure that the parties know where they stand.

14. Therefore, the writ petitions are merely disposed of after rejecting their prayers, but with a direction to the DRT to dispose of S.A. No.568 of 2014 after considering all the interlocutory applications including the amendment application and dispose of S.A.No.568 of 2014 within a period of three (03) months from the date of receipt of a copy of this Order. The Tribunal shall do so uninfluenced by any of the observations contained either in its previous order or in the order of the DRAT or in the order of this Court so that the issues are dealt with in accordance with law. Since it is admitted that the borrowers are in possession, the borrowers shall not induct any third parties into possession of the property. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 12, 2019
Mgr

