

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**

**AND**

**THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**WRIT PETITION No.19165 OF 2019**

**ORDER:** (Per Hon'ble Sri Justice K. Lakshman)

This Writ Petition is filed by the petitioners challenging the order, dated 30.07.2019, passed in I.A. No.976 of 2019 in SAIR No.308 of 2019, by the Debts Recovery Tribunal - II, Hyderabad, dismissing the petition filed by the petitioner to condone the delay of 85 days in filing the application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. The petitioners filed SAIR No.308 of 2019 under Section 17 of the SARFAESI Act before DRT - II to declare the Public Notice for Sale, dated 20.10.2018, fixing the date of auction on 28.11.2018 against schedule properties and pursuant to the same, conducting the auction on 28.11.2018 by respondent No.1 - Corporation as illegal and also sought for other reliefs.

3. The contention of the petitioners is that petitioner No.1 availed the credit facilities from respondent No.1 Corporation in 2012 by offering the property of petitioner No.2 as security, but could not repay the amounts that led to initiation of proceedings by respondent No.1 - Corporation under the SARFAESI Act.

4. According to the petitioners, earlier they filed applications vide S.A. No.294 of 2013 and 110 of 2018 under SARFAESI Act challenging the measures taken by respondent No.1 Corporation against the secured asset, and S.A. No.294 of 2013 was allowed on 25.01.2018, while S.A. No.110 of 2018 is pending adjudication. There is no stay in it. Respondent No.1 issued public notice for sale, dated 20.10.2018 against the secured asset proposing to conduct auction on 28.11.2018. The petitioners submitted One Time Settlement application on 22.11.2018. Without considering the same, respondent No.1 conducted auction on 28.11.2018 and confirmed the sale in favour of respondent No.2. According to the petitioners, there was confusion with regard to payment of balance sale consideration etc. by respondent No.2 and therefore, they have submitted representation dated 24.12.2018 seeking information with regard to auction conducted etc. There was no response from respondent No.1 and, therefore, the petitioners have filed Writ Petition No.47769 of 2018 before this Court seeking to consider the said representation, dated 24.12.2018 and subsequently withdrew the same. After withdrawing the said writ petition, they have approached the DRT - II by filing a petition under Section 17 of the SARFAESI Act vide SAIR No.308 of 2019 along with I.A.No.976 of 2019 to condone the delay of 85 days in filing the said petition. Under the said circumstances, delay was caused in filing SAIR No.308 of 2019 which was neither intentional nor deliberate on their part.

5. Respondent No.1 - Corporation filed its counter denying the contents of the affidavit filed in support of the said I.A.No.976 of 2019 and contended that the petitioners have got full knowledge about the proper forum to ventilate their grievance. It is further contended that with an intention to protract the proceedings, they have approached this Court. The delay was intentional and the petitioners failed to explain the day-to-day delay caused in filing the petition and they have also failed to give sufficient cause for the said delay. Therefore, prayed to dismiss the petition.

6. After hearing both sides, the DRT - II, Hyderabad, dismissed I.A.No.976 of 2019, by its order, dated 30.07.2019. Aggrieved by the said dismissal order, the petitioners approached this Court by filing the present writ petition.

7. Heard Mr. B. Chandrasen Reddy, learned counsel for the petitioners and Mr. M. Hamsa Raj, learned counsel for respondent No.1 Corporation and also Mr. K. Buchi Babu, learned counsel for respondent No.2.

8. Respondent Nos.1 and 2 filed separate counter affidavits reiterating the contentions they have taken before the Tribunal.

9. On perusal of the order under challenge, the Tribunal dismissed I.A. No.976 of 2019 on the ground that the petitioners herein earlier filed S.A. Nos.294 of 2013 and 110 of 2018 challenging the measures initiated under the SARFAESI Act against the secured

asset. S.A. No.294 of 2013 was allowed on 25.01.2018 and the second S.A. No.110 of 2018 is pending before the Tribunal for consideration. Since there was no stay in the said S.A. No.110 of 2018, respondent No.1 Corporation initiated proceedings under the SARFAESI Act by way of issuing notice dated 20.10.2018 fixing the auction on 28.11.2018. The Tribunal also held that the petitioners herein filed W.P. No.47769 of 2018 and subsequently withdrawn the same. The dismissal of the said application filed by the petitioners to condone the delay of 85 days in filing the petition under Section 17 of the SARFAESI Act was on the ground of forum hunting by referring the earlier proceedings initiated by the petitioners herein. It is relevant to note that the Tribunal instead of deciding the I.A. on its own merits including the reasons given by the petitioners to condone the delay of 85 days, discussed about the earlier proceedings and dismissed the said I.A. by saying that the petitioners have resorted to forum hunting. There is no reference in the impugned order about the reasons given by the petitioners in I.A. No.976 of 2019 with regard to causing of 85 days delay in filing the petition under Section 17 of the SARFAESI Act. The reasons assigned by the petitioners herein in the said I.A. for condoning the delay of 85 days is sufficient or not etc. are not at all considered by the Tribunal. Therefore, the impugned order passed by the Tribunal dismissing I.A. No. 976 of 2019 by referring the earlier proceedings including S.A. Nos.294 of 2013 and 110 of 2018 and also W.P. No.47769 of 2018 on the ground of forum hunting instead of deciding the said I.A. on its own merits without

examining the reasons mentioned by the petitioners to condone the delay of 85 days. Therefore, the impugned order is not sustainable either on facts and or on law.

10. It is the contention of the petitioners that there was confusion with regard to the payment of bid amount by respondent No.2, they have sought details of public auction conducted during the pendency of OTS proposal etc. by way of submitting a representation 28.12.2018. Since there was no response from respondent No.1 Corporation, they have filed W.P. No.47769 of 2018 seeking a direction to respondent No.1 Corporation to consider the said representation and subsequently withdrew the same. Due to the said confusion and under the said circumstances, there was delay of 85 days in filing the application under Section 17 of the SARFAESI Act. We are satisfied with the said reasons given by the petitioners herein for delay of 85 days caused in filing the said application.

11. Accordingly, the writ petition is allowed. The order, dated 30.07.2019, in I.A.No.976 of 2019 in SAIR No.308 of 2019 passed by the Debts Recovery Tribunal - II, Hyderabad is set aside. The said I.A. No.976 of 2019 is allowed. The Debts Recovery Tribunal - II, Hyderabad is directed to assign regular number to the application (SAIR 308 of 2019) filed by the petitioners under Section 17 of the SARFAESI Act and dispose of the same in accordance with law. However, there shall be no order as to costs.

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

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**M.S. RAMACHANDRA RAO, J**

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**K. LAKSHMAN, J**

**3<sup>rd</sup> December, 2019**  
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