

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE SRI JUSTICE P. KESHA RAO**

WRIT PETITION Nos.18606 and 18642 of 2018

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

Challenging the order passed by the Debts Recovery Tribunal, Hyderabad, vacating the earlier interim order and also challenging the order passed by the Chief Judicial Magistrate, Warangal under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), the petitioner has come up with the above two writ petitions.

2. Heard Mr. C. Narender, learned counsel for the petitioner and Mr. A. Satyanarayana, learned counsel for the respondent bank.

3. The petitioner was a partner in a firm, which availed credit facilities from the respondent bank. After the account became a non-performing asset, the demand notice under Section 13(2) of the SARFAESI Act was issued on 09.02.2016. It was followed by possession notice dated 02.06.2016.

4. When the bank published tender-cum-auction sale notice on 17.09.2016, the petitioner filed an appeal in SA.No.463 of 2016 under Section 17 of the SARFAESI Act before the DRT. The DRT passed an interim conditional order of stay on 31.10.2016. The operative portion of the interim stay order passed by the DRT reads as follows:

“In the above circumstances it is orders:

- (i) The Respondent Bank is directed to go ahead with the sale as proposed but the sale should not be confirmed the same, provided the Applicant deposit Rs.4 lac i.e.

(25% of the reserve price) out of which Rs.2 lac to be deposited with the Bank by 11 A.M. on 07/11/16 and remaining Rs.2 lac within 15 days thereafter.

- (ii) In the event of failure to make payment as above by the Applicant the Respondent Bank shall confirm the sale in favour of the highest bidder and proceed as per law.
- (iii) The Applicant is also directed to make detailed proposal for settlement before the Bank Authority.
- (iv) Let the matter be listed on 16/12/16 for final hearing at Hyderabad.

Copy of this order be given to the parties.”

5. There is no dispute about the fact that the petitioner made payment of the amounts as stipulated in clause (i) of the operative portion of the order passed by the DRT, extracted above. Therefore, the stay continued in force.

6. But after nearly two years, the DRT passed a laconic, non-speaking order, vacating the interim stay, on 24.04.2018. The order passed by the DRT on 24.04.2018 reads as follows:

“For argument time extended till 21.5.18. An interim order stands vacated.”

7. Shocked at the manner in which the interim stay was vacated, the petitioner came up with WP.No.18606 of 2018. On 07.06.2018, this Court ordered notice in WP.No.18606 of 2018 and also granted an interim stay.

8. However, in the mean time, the bank approached the Chief Judicial Magistrate, Warangal, under Section 14 of the SARFAESI Act and obtained an order dated 01.03.2018. This is despite the fact that interim stay earlier granted by the DRT on 31.10.2016 was vacated only on 24.04.2018 and on the date on which the Chief Judicial

Magistrate passed the order on 01.03.2018 the stay order, even as per the understanding of the DRT, continued in force.

9. Therefore, challenging the order passed by the Chief Judicial Magistrate on 01.03.2018, the petitioner came up with the second writ petition WP.No.18642 of 2018. Therefore, both the writ petitions were taken up together for disposal.

10. According to the petitioner, the bank proceeded to issue confirmation of sale on 12.04.2017 and also got the sale certificate issued on 07.05.2018. But according to the learned counsel for the bank, the confirmation of sale, issuing of the sale certificate and the registration of the sale took place only after 24.04.2018, the date on which the stay was vacated by the DRT. According to the learned counsel for the bank, today the appeal is pending before the DRT, but the sale certificate has been registered and possession taken and handed over to the auction purchaser.

11. But the facts narrated above would show that the order of the DRT dated 24.04.2018, abruptly vacating the interim stay granted 18 months earlier, without a reasoned order, has been taken advantage of by the bank. After 24.04.2018, the Court was closed for summer vacation in May 2018 and immediately upon the reopening of the Court, the first writ petition was filed on 04.06.2018 and an interim stay of further proceedings granted on 07.06.2018.

12. However, the fact remains that sale certificate was registered and possession taken during the interregnum between 24.04.2018 and 07.06.2018. In such circumstances, all that the petitioner can seek is

only restitution. The restitution has to be sought by the petitioner only before the Court, from which she had a benefit of stay or any other interim order.

13. Whatever has happened during the interregnum between 24.04.2018 and 07.06.2018, cannot justify the order passed on 24.04.2018. The order dated 24.04.2018, which we have extracted above, is a non-speaking, laconic order. Reasons form the very foundation of a system of administration of justice, whether it be a Court or a quasi-judicial authority. After having granted a speaking order of stay on 31.10.2016, the DRT could not have vacated the interim order by one line order. Today, the bank cannot contend that the events that took place after the vacation of the interim order would justify the nature of the interim order.

14. Therefore, we are of the considered view that the vacation of the interim order by a one line order cannot be approved merely on the basis of the subsequent events and the order dated 24.04.2018 requires to be set aside. Accordingly, WP.No.18606 of 2018 is allowed and the impugned order dated 24.04.2018 is set aside.

15. As to what should follow, as a consequence of our above said order, is actually a matter for the DRT to now decide, in view of the subsequent developments. It is open to the petitioner to move the DRT for appropriate reliefs, in the light of the above order.

16. Coming to WP.No.18642 of 2018, the same was filed on 05.06.2018 challenging the order of the Chief Judicial Magistrate dated

01.03.2018. By the time the writ petition was filed, the possession was taken.

17. Therefore, leaving it open to the petitioner to work out her remedies before the DRT in the pending appeal, WP.No.18642 of 2018 has to be closed.

Accordingly, WP.No.18606 of 2018 is allowed and the impugned order is set aside. WP.No.18642 of 2018 is closed. Liberty is given to the petitioner to seek appropriate reliefs before the DRT.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

January 29, 2019
DSK