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

**WP.No.s 22003 and 22057 of 2019**

**COMMON ORDER:** *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

*1.* Heard counsel for the petitioners and Sri M.Srikanth Reddy, Counsel for respondents.

*2.* In WP.No.22003 of 2019 the order dt.26.09.2019 in IA.No.4691 of 2019 in SA.No.307 of 2019 of the Debt Recovery Tribunal-II, Hyderabad is assailed. In WP.No.22057 of 2019, the order dt.26.09.2019 in IA.No.4686 of 2019 in SA.No.272 of 2019 is assailed.

*3.* Two different set of properties were notified by the respondents for sale through *e*-auction notice dt.17.08.2019 published in Andhra Jyothi Telugu Daily on 27.08.2019 fixing date of auction as 26.09.2019.

*4.* This was challenged in both the S.A.s by the petitioners and IA.No.s 4691 and 4686 of 2019 were filed therein to stay the same.

5. The Tribunal proceeded on the assumption that there is no violation of Rule 9(1) of Security Interest (Enforcement) Rules, 2002 if date of publication i.e., 27.08.2019 is included and there is a clear gap of 30 days to the date of auction scheduled on 26.09.2019.

6. This is assailed by the petitioners in both the Writ Petitions on the ground that if the date of publication i.e. 27.08.2019 is excluded, then there is no clear gap of 30 days to the date of auction scheduled on 26.09.2019, that the date of auction would be the 30th

day, and there are no clear 30 days between the date of publication and date of sale.

7. Reliance is placed by the counsel for petitioners on the decision of the Division Bench of this Court in ***R.Vimala v. State Bank of India***[1].

8. In the said case, after considering Rule 9(1) and also Section 9 of the General Clauses Act, and Section 12 of the Limitation Act, 1963, a Division Bench of this Court held that the 30 day period cannot be counted including both the date of publication and the date of sale, and there must be clear 30 days gap between the date of publication and date of sale, and one of them is required to be excluded in computing the period of 30 days.

9. In our considered opinion, if either of these days is excluded, in the present case the auction date scheduled would be the 30th day and there would be no clear 30 days gap as required by Rule 9(1) of the Rules.

10. Therefore, both the Writ Petitions are allowed; the orders of the Debt Recovery Tribunal-II, Hyderabad dt.26.09.2019 in IA.No.4691 of 2019 in SA.No.307 of 2019 and in IA.No.4686 of 2019 in SA.No.272 of 2019, are both set aside and both the IAs are allowed; and the respondents are permitted to conduct fresh *e*-auction sale by maintaining clear 30 days gap from the date of publication to the date of auction. All other grounds raised in the S.A.s are left open to be urged before the Tribunal. No order as to costs.

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[1] 2017(2) DRTC 320 (T. & AP)

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

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

**K.LAKSHMAN, J**

16th December, 2019.

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