

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**  
**AND**  
**HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**  
**WRIT PETITION No.35953 of 2018**

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

The successful bidder in an auction conducted by the State Bank of India in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'Act, 2002') has come up with the above Writ Petition seeking a very limited direction to the Debts Recovery Tribunal to dispose of an appeal filed by the 4<sup>th</sup> respondent-borrower.

2. Heard Mr.G.Vasantha Rayudu, learned Counsel for the petitioner, Mr.Maruti Jadav, learned Counsel for the Bank and Mr.S.Karunakar Reddy, learned Counsel for the 4<sup>th</sup> respondent.

3. The 4<sup>th</sup> respondent herein obtained a term loan from the 3<sup>rd</sup> respondent bank, way-back in the year 2008 and committed default in making repayment. The account became a Non-Performing Asset and the bank issued a demand notice on 19.04.2011 under Section 13 (2) of Act, 2002, demanding a sum of Rs.2,79,31,113/-. It was followed by a possession notice, dated 05.05.2011 under Section 13 (4) of the Act, 2002.

4. An order was passed by the Chief Metropolitan Magistrate under Section 14 of the Act, 2002 on 23.09.2011 and physical possession of the secured asset was taken on 11.02.2012.

5. Thereafter, a first '*e-Auction*' notice was issued on 29.02.2012 fixing the auction to be held on 30.03.2012. Challenging the auction notice, the 4<sup>th</sup> respondent filed an application under Section 17 of the Act, 2002 in S.A. No.171 of 2012. The Tribunal passed a conditional order of stay on 22.03.2012. The first part of the conditional order was complied with by the 4<sup>th</sup> respondent by making payment of Rs.15.00 Lakhs. Therefore, the auction got stalled. Thereafter, the 4<sup>th</sup> respondent committed default in complying with the second condition, viz., a condition for payment of Rs.60.00 Lakhs.

6. Therefore, the bank issued a second auction notice, dated 02.05.2012, fixing the date of auction as 04.06.2012. Immediately, the 4<sup>th</sup> respondent moved an interlocutory application in I.A. No.624 of 2012 in the pending appeal S.A. No.171 of 2012 for stay of auction. The Tribunal passed a conditional order on 31.05.2012, permitting the bank to proceed with the auction sale, but not to confirm the sale for a period of thirty (30) days so that the 4<sup>th</sup> respondent will have the liberty to make payment and redeem the property.

7. The 4<sup>th</sup> respondent filed an application for extension of time in I.A. No.764 of 2012 and deposited a sum of Rs.10.00 Lakhs on 02.07.2012. On the said application, an order was passed on 05.07.2012 directing the 4<sup>th</sup> respondent to pay a sum of Rs.2,05,25,000/- within four (04) weeks, if she wanted the auction to be cancelled.

8. As against the said order, the 4<sup>th</sup> respondent approached the Debts Recovery Appellate Tribunal (DRAT) and the DRAT directed the 4<sup>th</sup> respondent to make a pre-deposit of 50% of the dues, by order, dated 14.08.2012. This order of the DRAT was challenged by the 4<sup>th</sup> respondent before the High Court of Madras in W.P. No.24733 of 2012. Before the High Court, the 4<sup>th</sup> respondent gave certain undertakings. After complying with the undertaking, the 4<sup>th</sup> respondent sought a One-Time Settlement (OTS), but the same was rejected by the bank.

9. The appeal preferred by the 4<sup>th</sup> respondent before the DRAT was later dismissed as infructuous on 09.02.2015, as the auction purchaser took the money back and the auction got cancelled.

10. Thereafter, a third auction notice was issued on 26.02.2017, fixing the auction to be held on 30.03.2017. Immediately, the 4<sup>th</sup> respondent moved an application in I.A. No.785 of 2017 seeking amendment of the reliefs in the appeal. By this time, the appeal in S.A. No.171 of 2012 got transferred to DRT-II, Hyderabad and re-numbered as S.A. No.447 of 2017.

11. Therefore, the amendment application was later allowed and the bank was permitted to proceed with the sale on 30.03.2017 with a direction not to issue the sale certificate, if the 4<sup>th</sup> respondent deposited 50% of the outstanding dues in two equal installments.

12. The 4<sup>th</sup> respondent filed an application for extension of time, but the same was dismissed. Challenging the dismissal of the application for extension of time and challenging the action of the

bank in refunding the amount to the auction purchaser, the 4<sup>th</sup> respondent filed two writ petitions in W.P. Nos.12835 of 2017 and 12836 of 2017, but withdrew the same on 24.07.2017.

13. Thereafter, a fourth auction sale notice was issued on 04.06.2017 fixing the date of auction as 23.06.2017. The 4<sup>th</sup> respondent again moved two Miscellaneous Applications, one for advancing the hearing of the appeal and another for amendment. The application for amendment was allowed, but the application for stay was disposed of permitting the bank to proceed with the sale but not to issue the sale certificate.

14. As against the said order, the 4<sup>th</sup> respondent filed an appeal before the DRAT and the DRAT allowed the appeal on 06.07.2017 with a direction to the DRT to dispose of the application in S.A. No.447 of 2017 within a period of three (03) months.

15. In this background, the bank proceeded with the conduct of the auction on 23.06.2017 and issued a sale certificate to the successful bidder on 05.07.2017.

16. Thereafter, the 4<sup>th</sup> respondent moved a few interlocutory applications, praying for impleading the auction purchaser, for carrying out amendment and for furnishing the list of documents. The DRT allowed the applications for impleadment and amendment, but dismissed the application for furnishing the list of documents.

17. As against the said order, the 4<sup>th</sup> respondent moved an appeal before the DRAT and the DRAT disposed of the same by order dated 09.11.2017 with certain directions. Pursuant to those directions,

the 4<sup>th</sup> respondent again moved certain applications, which were dismissed by the DRT. As against the dismissal of those applications, a fresh appeal was filed before the DRAT and the DRAT disposed of the same with certain directions.

18. Frustrated at the repeated filing of interlocutory applications and a challenge to the orders passed on those applications before the DRAT, the person, who secured the sale certificate in the auction held on 23.06.2017, has come up with the above writ petition seeking a *mandamus* to direct the DRT to dispose of S.A. No.447 of 2017 within a time frame.

19. The above narration of facts goes to show that the 4<sup>th</sup> respondent has actually put to shame, even the procedure prescribed by the Code of Civil Procedure. The Debts Recovery Tribunal (Procedure) Rules, 1993, make it clear that the provisions of the CPC and the Indian Evidence Act, 1872, may not *per se* apply to the proceedings before the Tribunal and that the Tribunal shall ensure compliance with the principles of natural justice. But, the 4<sup>th</sup> respondent appears to have exploited every loophole in the law and has successfully warded off auction purchasers by protracting the application pending before the DRT. It is sickening to note that repeated interlocutory applications were filed by the 4<sup>th</sup> respondent and every order passed by the DRT became the subject-matter of an appeal before the DRAT. At this stage, we do not know whether any auction purchaser will have any hope of the appeal of the 4<sup>th</sup> respondent getting disposed of at any time.

20. Therefore, taking note of the manner in which the 4<sup>th</sup> respondent has carried out a tirade, this writ petition is disposed of directing the DRT to dispose of the appeal, S.A. No.447 of 2017 (Old S.A. No.171 of 2012) within a period of two (02) months from the date of receipt of a copy of this order. No further interlocutory applications shall be entertained at the instance of the 4<sup>th</sup> respondent and the Tribunal, in view of the limited scope of the inquiry to be conducted under Section 17 of the Act, 2002, hear the arguments on the side of the borrower, secured creditor and the auction purchaser, dispose of the application within two (02) months.

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

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**V. RAMASUBRAMANIAN, J**

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**ABHINAND KUMAR SHAVILI, J**

**March 1, 2019**  
SMR/Mgr