

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.41964 of 2017

ORDER: *(per V. Ramasubramanian, J)*

1) Aggrieved by the imposition of a condition by the Debts Recovery Tribunal for the grant of stay of an auction, the borrower has come up with the above writ petition.

2) Heard Mr.B.Chandrasen Reddy, learned counsel for the petitioner and Mr.S.Sainathan, learned counsel for the respondent-bank.

3) The petitioner availed credit facility from the respondent-bank for carrying on a poultry business. The account became a non-performing asset forcing the bank to initiate steps under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act").

4) When the bank issued an auction sale notice dated 18.08.2017, the petitioner filed an appeal in S.A.No.655 of 2017 challenging the same. The petitioner also sought interim stay of the auction.

5) By an order dated 25.09.2017, the Tribunal granted stay subject to the condition that the petitioner deposited 20% of the outstanding dues in two equal instalments, the first being made before the date and time of the auction and the second instalment being made within two weeks thereafter.

6) Contending that the mortgaged property was an agricultural property and that therefore the Tribunal ought to have granted blanket stay, the petitioner came up with the above writ petition.

7) On 11.12.2017 when the writ petition came up for orders as to admission, the counsel for the respondent took notice, and no interim order was passed.

8) It appears that the property which is the subject matter of this writ petition namely W.P.No.41964 of 2017 was brought to sale in an auction held on 04.02.2019 and some one has made the highest bid. The highest bidder has time to comply with the terms and conditions of the auction. Therefore, at this stage we see no reason to interfere with the conditional order passed by the Tribunal.

9) The question as to whether the property is an agricultural land or not and whether Section 31 (i) of the Securitisation Act would apply or not, is to be adjudicated finally by the Tribunal. For the purpose of grant of interim order, even if 100% *prima facie* case is presumed, there are other two parameters to be taken into account by the Tribunal. Therefore, the conditions imposed by the Tribunal for the grant of stay cannot be interfered with.

10) Hence, the Writ Petition is dismissed. The other questions are left open to be adjudicated in the appeal.

11) As a sequel, miscellaneous petitions, if any, pending in the Writ
Petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAHA RAO, J

February 05, 2019
gkv/smr