THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.3214 of 2020

O R D E R :

1. Petitioner herein is an auction purchaser, who had paid a sum of Rs.24,79,500/- for purchasing the machinery belonging to the 3rd respondent auctioned by the 2nd respondent in an *e*-auction conducted on 14.08.2018.

2. Petitioner contends that though he paid the entire consideration by 29.08.2018 to the 2nd respondent, possession of the machinery purchased by the petitioner was not handed over to the petitioner till date, because the 3rd respondent/borrower had approached the Debt Recovery Tribunal-II, Hyderabad, by filing SA.No.337 of 2018 and obtained an order on 28.08.2018 directing the 2nd respondent-bank not to issue Sale Certificate.

3. Petitioner contends that the 3rd respondent-Company was later admitted before the NCLT, Hyderabad in CP(IB)/HDB/398/2016 and an Interim Resolution Professional(IRP) was also appointed, who later withdrew the SA.No.337 of 2018 on 27.06.2019, and notwithstanding the same, possession of the machinery has not been given by the 2nd respondent to the petitioner till date.

4. Petitioner therefore seeks refund of the amount of Rs.24,79,500/- from the 2nd respondent with interest @ 24% per annum contending that the 2nd respondent ought not to have retained the machinery in spite of the Securitization Application filed by the 3rd respondent being dismissed by the Debt Recovery Tribunal. It is also contended that the material, which the petitioner had bought in the auction, having been kept idle for more than 1½ years would have become damaged and the petitioner cannot be compelled now to proceed to take the possession of the said machinery.

5. Counter is filed by the 2nd respondent opposing this application, firstly, contending that the petitioner should avail the remedy before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002.

6. When there are no disputed questions of fact, which require to be considered by the said Tribunal, we do not see any reason why the petitioner should avail the remedy under Section 17 of the Act in the facts and circumstances of the instant case.

7. It is next contended that the 2nd respondent-Bank was unable to deliver the possession of the machinery, which was purchased by the petitioner, in view of the pendency of the SA.No.337 of 2018 filed by the 3rd respondent before the Debt Recovery Tribunal and stay has been granted therein on 28.08.2018.

8. But the 2nd respondent does not dispute the fact that the said SA was dismissed as withdrawn at the instance of the IRP of the 3rd respondent on 27.06.2019, and no valid reason is assigned why the machinery is not delivered to the petitioner after 27.06.2019 till date i.e., for more than 8 months.

9. We find considerable force in the contention of the counsel for petitioner that the machinery, which the petitioner purchased in the auction conducted by the 2nd respondent on 14.08.2018, would have become damaged or obsolete by now and we hold that the petitioner cannot now be compelled to take it.

10. Accordingly, this Writ Petition is allowed and the 2nd respondent is directed to refund Rs.24,79,500/-, deposited by the petitioner for purchase of the machinery belonging to the 3rd respondent in the *e*-auction held on 14.08.2018, with interest @ 7% per annum within a period of four (04) weeks from today. No order as to costs.

11. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

25th February, 2020.
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