

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE SRI JUSTICE K.LAKSHMAN**

WRIT PETITION No.23860 OF 2019

ORDER:*(per Hon'ble Sri Justice A.Rajasheker Reddy)*

This Writ Petition is filed challenging the order dated 25.10.2019 in I.A.No.5007 of 2019 in S.A.No.185 of 2019 on the file of Debts Recovery Tribunal-II, Hyderabad (DRT), wherein and whereby, the application seeking stay of auction on 25.10.2019 is dismissed.

Heard Sri G.K.Deshpande, learned counsel for the petitioner and Smt. V.Dyumani, learned Standing Counsel for the respondent Bank.

Learned counsel for the petitioner submits that the auction notice was served on the petitioner on 11.10.2019 and auction was held on 25.10.2019, which is in clear violation of provisions of Rule 8(6) and 9(1) of Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') wherein 15 days gap is prescribed. He submits that though the said issue was raised before the DRT, without considering the same, interim application has been dismissed, which is illegal and not in consonance with the judgment of this Court in **Dandagala Venkata Swamy Raju v. Andhra Pragathi Grameena Bank** in WP No.7928 of 2017, dated 11.09.2018. He further submits that since the Securitization Appeal No.185 of 2019 filed challenging earlier auction, which failed, petitioner filed amendment application in Securitization Appeal seeking amendment of the

prayer challenging the fresh auction. He submits that the DRT dismissed the stay application but the application seeking amendment is pending. He also submits that though interim order is operating in this writ petition, the auction was conducted in the month of January, 2020 in respect of one of the properties and that liberty may be granted to challenge the said auction.

On the other hand, learned Standing Counsel for the respondent Bank submits that since the Securitization Application is pending and the issues raised herein have also been raised in the DRT by the petitioner, as such, this writ petition can be disposed of with a direction to the DRT to consider the said aspects in the Securitization Application No.185 of 2019.

In this case, it is to be seen that the petitioner filed amendment application in S.A.No.185 of 2019 challenging the auction conducted on 25.10.2019, which is pending before the DRT.

A reading of the impugned order of the DRT dated 25.10.2019 goes to show that the issues raised by the petitioner herein have not been properly considered. More so, this Court passed interim order on 31.10.2019, which reads as follows:

“Sri V.Murali Manohar, learned counsel, takes notice for the respondent.

Pending further orders, the certificate of sale issued to the auction purchaser by the respondent shall not be registered until further orders.”

In view of the same, we are of the opinion that the amendment application pending in S.A.No.185 of 2019 needs to be allowed. Since the petitioner had already availed alternate remedy, this Court is also of the opinion that the petitioner should pursue the said remedy instead of pursuing parallel remedies.

In view of above facts and circumstances, the DRT is directed to decide the S.A.No.185 of 2019, after allowing the amendment application, within a period of three months from the date of receipt of a copy of this order. It is open for the parties to raise all the objections raised herein or any other objections tenable under law in S.A.No.185 of 2019 and the DRT to consider the same afresh. The observations made by the DRT in the impugned order in the writ petition, stand deleted. Pending disposal of the SA No.185 of 2019, interim order granted by this Court on 31.10.2019 shall continue. It is needless to state that the interim order dated 31.10.2019 will operate in respect of second auction also.

With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any, pending shall stand disposed off.

A.RAJASHEKER REDDY, J

K.LAKSHMAN, J

Date: 07.08.2020
kvs

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