

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.25909 of 2019

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

This Writ Petition is filed challenging the order dated 11.01.2019 in SA.No.20 of 2018 passed by the Debts Recovery Tribunal – II (for short 'DRT-II'), Hyderabad.

2. The petitioner herein is an Asset Reconstruction Company (India) Limited incorporated under the Companies Act, 1956 and registered under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

3. The respondent No.1 is the borrower company which availed credit facilities from the Canara Bank; the respondent No.2 is the mortgagor, who had created equitable mortgage over his property in favour of the Canara Bank to secure the repayment of loan by the respondent No.1; and the respondent No.3 is the successful bidder and auction purchaser who purchased the secured asset in e-auction held on 23.03.2018.

4. The said auction was conducted pursuant to the auction public notice for sale dt. 07.03.2018 issued by the petitioner.

5. This was assailed by the respondent Nos.1 and 2 in SA.No.20 of 2018 and they had prayed for setting aside the auction sale pursuant to the auction public notice for sale dt. 07.03.2018 issued by the petitioner.

6. IA.No.1169 of 2018 was filed by the respondent Nos.1 and 2, who had filed the SA, for amendment of prayers in the SA specifically

challenging the auction public notice for sale dt. 07.03.2018 fixing the date of auction on 23.03.2018 as null and void and to declare all the consequential measures pursuant to the said auction public notice for sale dt. 07.03.2018 issued by the petitioner as illegal and arbitrary. The respondent Nos.1 and 2 also sought for declaration that the reserve price fixed by the petitioner under the auction public notice for sale dt. 07.03.2018 is not justified.

7. Pleadings were also sought to be incorporated in the SA with regard to certain procedural infirmities in the conduct of the auction sale pursuant to the auction public notice for sale dt. 07.03.2018 and in particular, it was contended that Rule 8 and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 were not followed; that the respondent No.1 was not issued or served sale notice and also the e-auction sale notice under Rule 8(6), 9(1) of the Rules; and that it was also not affixed at the conspicuous place of the schedule properties or published in two leading newspapers.

8. To the application for amendment, a counter affidavit was filed by the petitioner disputing the contentions raised in the amendment petition specifically and opposing the application for amendment.

9. It appears that the application for amendment in IA.No.1169 of 2018 was allowed by the DRT-II on 17.04.2018.

10. Thereafter, the respondent Nos.1 and 2 filed the amended copy of the SA incorporating the amendments allowed by the DRT-II.

11. But by oversight, the petitioner did not file any reply to the amended SA post-amendment.

12. When the SA was taken up for hearing by the DRT-II, only on the ground that there was no additional reply to the amended relief from the side of the petitioner, the SA was allowed on 11.01.2019 and the e-auction held on 23.03.2018 pursuant to the auction public notice for sale dt. 07.03.2018 was set aside and the petitioner was directed to take back possession of the SA schedule properties from the respondent No.3.

13. The petitioner then filed a review petition in RA.No.2 of 2019 before the DRT-II to review the order passed by it on 11.01.2019 in SA.No.20 of 2018.

14. The respondent No.3 challenged the order in the SA by filing WP.No.3137 of 2019 before this Court. This Court by order dt. 18.03.2019 did not entertain the writ petition leaving it open to the DRT-II to decide the application for review filed by the petitioner, since the same issue is pending consideration before it also. This Court left open to all parties to raise all objections in the application for review and closed the writ petition.

15. However, when the review was taken up by the DRT-II, the petitioner filed IA.No.3413 of 2019 in RA.No.2 of 2019 to receive certain documents invoking Section 19(25) of the Recovery of Debts and Bankruptcy Act, 1993. But the said application was rejected by the DRT-II on 06.08.2019.

16. This was questioned by the petitioner in WP.No.17213 of 2019. But this Court did not interfere with the said order and dismissed the writ petition on 29.08.2019.

17. Thereafter, the petitioner has assailed the original order dt. 11.01.2019 in SA.No.20 of 2018 before this Court.

18. Counsel for the petitioner contends that on account of oversight no additional reply was filed to the amended SA post-amendment, and on that sole ground the SA filed by the respondent Nos.1 and 2 had been allowed though there is no merit in the contentions of the respondent Nos.1 and 2 with regard to the compliance with the Rules made under the SARFAESI Act, 2002, and so the petitioner had suffered the order in the SA.

19. Sri M. Narender Reddy, learned counsel for the respondent Nos.1 and 2, also contended that certain contentions raised on behalf of the respondent Nos.1 and 2 were not noticed by the DRT-II while deciding SA.No.20 of 2018 on 11.01.2019.

20. Though it was contended that the petitioner is not entitled to maintain the writ petition, we are not able to agree with the said submission because the petitioner had waited for the review petition filed by it to be decided and after it was so decided on 04.10.2019, the petitioner has chosen to file the instant writ petition in November 2019. Therefore, it cannot be said that there was any *laches* on the part of the petitioner in filing this writ petition, particularly, when the writ petition filed by the respondent No.2 was not entertained by this Court on the ground that the review petition filed by the petitioner was pending before the DRT-II.

21. Serious issues of fact and law arise for consideration in the SA affecting the property rights of the respondent Nos.1 and 2 as well as the respondent No.3.

22. In this view of the matter, we are of the opinion that the impugned order deserves to be set aside by giving opportunity to the petitioner to file additional reply to the amended SA filed by the

respondent Nos.1 and 2 and get the matter adjudicated on merits in the interest of justice.

23. Accordingly, the writ petition is allowed; the order dated 11.01.2019 in SA.No.20 of 2018 passed by the DRT-II, Hyderabad is set aside; the said SA is remanded back to the DRT-II for fresh consideration; the petitioner is permitted to file additional reply to the amended SA filed by the respondent Nos.1 and 2 herein and also permitted to file material in support of the pleadings in the amended SA after serving copies thereof on the respondent Nos.1 to 3 within one month of the restoration of the SA by the DRT-II; all the parties are permitted to lead oral and documentary evidence in addition to the evidence which was already on record, if they so choose; all contentions available to the parties may be raised before the DRT-II and the same shall be considered by the DRT-II and a fresh order be passed in accordance with law within four (4) months from the date of receipt of a copy of this order. Pending disposal of the SA afresh by the DRT-II, the respondent No.3 shall maintain *status quo* with regard to the subject property in all respects.

As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

M.S. RAMACHANDRA RAO, J

T. AMARNATH GOUD, J

February 26, 2020
DSK