

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN

AND

THE HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY

Writ Petition No.2497 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. B. Sreenivasa Reddy, learned counsel for the petitioner and Ms. V. Dyumani, learned counsel for the respondent- Union Bank of India.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner has challenged legality and validity of the sale notice for sale of immoveable property dated 18.12.2021 issued by the respondent fixing auction sale of the schedule property on 20.01.2022.

3. It appears that petitioner had availed housing loan of Rs.20,50,000/- from the respondent in the year 2017. To avail the aforesaid loan, petitioner had mortgaged the schedule property.

4. For failure of the petitioner to repay the loan amount, respondent initiated proceedings under the provisions of Section 13(4)(a) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (briefly referred to hereinafter as the '**SARFAESI Act**').

5. When notice was issued by the Advocate-Commissioner on 03.12.2019 to the petitioner for vacating the premises of the schedule property, petitioner filed securitisation application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-II, Hyderabad (Tribunal), which was registered as S.A.No.9 of 2021. Petitioner also filed an interlocutory application seeking stay of all further proceedings including dispossession of petitioner or her tenants from the schedule property which was registered as I.A.No.91 of 2020.

6. By order dated 07.01.2020, Tribunal passed the following order, viz.,

“The issue raised by the petitioner will be enquired upon filing counter by the respondent bank. The petitioner is the borrower. The outstanding dues as mentioned in the possession notice dated 26.02.2016 are Rs.21,13,602/-. However, having regard to the facts and circumstances of the case and in the interest of justice, interim stay can be granted on certain conditions. Accordingly, there shall be interim stay of taking physical possession of the petition schedule property pursuant to advocate commissioner notice dated 03.12.2019 appointed in Crl.M.P.No.775 of 2019 on the file of the Chief Metropolitan Magistrate, L.B. Nagar, R.R. District, subject to petitioner-applicant depositing 25% of the outstanding dues in two instalments – the first instalment 10% of the dues is directed to be deposited within ten days from the date of the order and the second instalment 15% of the dues is directed to be deposited within two weeks thereafter directly with the respondent bank. In the event of failure of compliance of any of the aforesaid conditions, the interim stay shall stand vacated and the respondent bank shall be at liberty to proceed further as per Rules.”

7. From the above, we find that the outstanding dues of petitioner as on 26.02.2019 was Rs.21,13,602.00. Tribunal had granted interim stay restraining the respondent from taking physical possession of the schedule property on the condition that petitioner should deposit 25% of the outstanding dues in two instalments, viz., first instalment of 10% within ten (10) days and thereafter, second instalment of 15% within two (02) weeks after deposit of the first instalment. It was clarified that in the event of failure of compliance of any of the above conditions, the interim stay would stand vacated and respondent-Bank would be at liberty to proceed further as per rules.

8. According to learned counsel for the petitioner, petitioner had deposited Rs.4 lakhs. Thereafter, petitioner paid the amounts of Rs.84,900 and Rs.15,400/- by 08.09.2021. Evidently, the payments were made beyond the period prescribed by the order dated 07.01.2020.

9. When we asked learned counsel for the petitioner as to whether petitioner had informed the Tribunal about such delayed payment and also made a prayer for extension of the order dated 07.01.2020, he could not give a direct reply. Therefore, there is non-compliance to the conditions mentioned in the order dated 07.01.2020.

10. As per the said order, Tribunal had granted liberty to the respondent to proceed in accordance with law in the event of such non-compliance. Accordingly, respondent has issued the impugned sale notice for sale of immoveable property on 18.12.2021.

11. In the facts and circumstances of the case, we do not find any error or infirmity in the action taken by the respondent in issuing the impugned sale notice to warrant interference. However, since S.A.No.9 of 2021 is pending before the Tribunal, we make it clear that such sale notice would be subject to outcome of S.A.No.9 of 2020.

12. Writ Petition is disposed of. No order as to costs.

13. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

UJJAL BHUYAN, J

A. VENKATESHWARA REDDY, J

Date : 19.01.2022
Ndr