

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO.30063 OF 2015

Date:02.02.2023

Between:

Gutha Prabhakar Reddy,
S/o.Late Gutha Pitchi Reddy,
Aged about 38 yrs, Occu : Business,
R/o.H.No.11-14-83,
Janapriya Garden, Hairpuri Colony,
Saroornagar Mandal, Hyderabad

.....Petitioner

And

M/s.Phoenix ARC Private Ltd.,
(Acting in its capacity as a trustee for
Phoenix Trust FY-13-2),
Reg. office at # 7th floor, Dani Corporate Park,
C.S.T. Road, Kalian,
Santacruz (E), Mumbai,
Rep., by its authorized Officer
Mr. Amith Kumar Guptha,
S/o.Mizazi Lal Gupta, Aged about 29 yrs,
Occu : Service R/o.Mumbai & another

.....Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO.30063 OF 2015

ORDER : *(Per Hon'ble Sri Justice P.Naveen Rao)*

Heard Sri T. Vijay Kumar, learned counsel for the petitioner, Sri A. Venkatesh, learned counsel appearing for the 1st respondent and Sri Prabhakar Peri, learned counsel appearing for the 3rd respondent.

2. Petitioner is the borrower from M/s.City Financial Consumer Finance Limited. As on 08.01.2013 on which date demand notice was issued, petitioner was liable to pay an amount of Rs.23,82,339/-. Holding that petitioner defaulted in repayment of the loan, his loan account was classified as a Non-Performing Asset and later the loan account was transferred to M/s.Phoenix ARC Private Ltd.-1st respondent herein. On 30.10.2013 notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') was issued. On 09.04.2014 notice under Section 13 (4) of the SARFAESI Act was issued to take possession of the secured asset and it

appears possession was taken on 26.12.2014. On 14.07.2015 notice under Rule 8 (6) of the of the Security Interest (Enforcement) Rules (for brevity 'the Rules') was issued, on 12.08.2015, e-auction sale notice was issued proposing to conduct e-auction on 23.09.2015. On the said date auction was held, 3rd respondent herein was declared as an auction purchaser and on 07.10.2015 sale certificate was issued in his favour. It appears sale certificate was later registered and possession was delivered to the auction purchaser on 07.10.2015. This writ petition is filed on 14.09.2015, challenging the sale notice dated 12.08.2015. On 07.12.2015, the Court having directed the respondent-financial institution to place before the Court the information regarding service of notice under Rule 8 (6) of the Rules, directed the auction purchaser to maintain status quo in all respects with regard to secured asset which was claimed to have been purchased by the petitioner.

3. On 12.09.2018 the Court directed the petitioner to file an additional affidavit as to whether notice sent to the co-borrower was received by her or not. On 28.11.2019, the Court ordered interim direction as prayed for. The interim direction prayed was to stay all further proceedings including sale by the

respondent-Bank in pursuant to the e-auction sale notice dated 12.08.2015.

4. Extensive submissions are made by both sides. The assertion made by the learned counsel for the petitioner are that no notice was issued under Rule 8 (6) of the Rules to the petitioner before proceeding to conduct auction and the entire proceedings are vitiated on that ground. Whereas, it has been the assertion of the respondents that notices were sent by the respondent-financial institutions to the address available and no other address was furnished by the petitioner. Further, in the writ petition, petitioner has mentioned the same address where the notices were sent and where the notices were pasted on the wall.

5. In **Phoenix ARC Private Limited Vs Vishwa Bharati Vidya Mandir & Others**¹ Hon'ble Supreme Court held that writ petition against private financial institutions is not maintainable by holding that while extending loan facility, the private financial institutions do not perform public functions and it is purely a commercial transaction and therefore, such transactions are not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.

¹ (2022) 5 Supreme Court Cases 345

6. As the initial financial institution which extended the loan facility and the Phoenix ARC Private Limited to whom loan account was transferred are the private financial institutions and petitioner is challenging issuing of auction notice and conducting of auction and taking further steps by the Phoenix ARC Private Limited, in view of the judgment of the Hon'ble Supreme Court in **Phoenix ARC Private limited**, the writ petition is not maintainable. In view thereof, we are not expressing any opinion on respective submissions.

7. Accordingly, the Writ Petition is dismissed.

8. However, petitioner is granted liberty to avail the remedy provided under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal or to avail any other remedy as may be available to him. In the event of petitioner availing the remedy provided by Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, we request the Tribunal to consider excluding the period spent before this Court by the petitioner from 14.09.2015 till date and for further period of six weeks from today towards computation of limitation. Since this Court granted interim direction as prayed for on 28.11.2019, which is

in operation, we deem it proper to continue the same, for a further period of six (6) weeks from today.

9. For the purpose of record, it is to be noted that alleging violation of *status quo* order, petitioner filed C.C.No.1438 of 2016. When the matter came up for consideration before the Division Bench, the Division Bench noticed that auction purchaser was directed to maintain *status quo*, whereas he was not one of the respondents. Further, there was no indication in the order that the auction purchaser was represented by the counsel at the time when the order dated 07.12.2015 was passed. Holding that the auction purchaser was not a party to the order dated 07.12.2015 the Division Bench left open to the petitioner to work out his remedies in the pending writ petition and to seek appropriate reliefs and closed the contempt.

Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

NAGESH BHEEMAPAKA, J

2nd February, 2023
Rds