

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NOs.3315 and 5334 of 2020

W.P.No.3315 OF 2020:

Between:

Bank of India, Adikmet Branch,
Opp: Vegetable Market,
Shankarmath Road, Nallakunta,
Hyderabad, rep.by its Authorized
Officer.

..... Petitioner

and

Debts Recovery Tribunal-I,
3rd Floor, Triveni Complex,
Abids, Hyderabad,
Rep.by its Registrar and others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 06.02.2023

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

1. Whether Reporters of Local Newspapers : **Yes**
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA
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!Counsel for the petitioner : Sri M.V.Ramana

Counsel for the Respondents : Sri C.Kumar

<Gist :

>Head Note:

? Cases referred:

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**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

WRIT PETITION NOs.3315 and 5334 of 2020

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

Petitioner-Bank extended credit facilities to a tune of
□ 90.00 lakhs to respondents 3 and 4 for obtaining housing loan. Holding that respondents 3 and 4 defaulted in repayment of the loan, the loan account was classified as Non-Performing Asset (NPA) and the Bank has taken recourse to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'Act, 2002') and DRT Act to recover the money. According to the Notice issued on 11.02.2019 under Section 13(2) of the Act, 2002, the outstanding dues quantified was
□ 85,71,031.90 ps. Respondent no.2 claimed that he has entered into an Agreement of Sale with respondents 3 and 4 on 18.07.2018 concerning the property which was subsequently mortgaged and which is treated as secured asset by the petitioner-Bank. Respondent no.2 claimed that he paid □ 30.00 lakhs towards advance/part sale consideration, out of total sale consideration of
□ 1.20 lakhs. He was required to pay balance □ 90.00 lakhs at the time of registration within six months from the date of Agreement of Sale. At the time of Agreement of Sale, respondents 3 and 4 have categorically admitted that schedule property was mortgaged with the

petitioner-Bank and agreed to clear the Bank dues before the registration of Sale Deed in favour of 2nd respondent. It is the case of the 2nd respondent that in spite of several requests made by him, the registered Sale Deed was not executed in his favour. In those circumstances, he filed O.S.No.1001 of 2019 in the Court of XI Additional Chief Judge, City Civil Court at Hyderabad, against respondents 3 & 4 and the petitioner-bank.

2. In the counter-affidavit filed by the petitioner-Bank in I.A., opposing interim stay, it is averred that they have already invoked the provisions of the Act, 2002 to recover the outstanding dues and also issued sale notice dated 25.11.2019, fixing the auction sale date on 27.12.2019 in respect of the schedule property. Having come to know that sale notice was already issued proposing to conduct auction of secured asset, which he claimed to have purchased, 2nd respondent filed S.A.No.333 of 2019 before the Debts Recovery Tribunal-I at Hyderabad under Section 17 of the Act, 2002. The Tribunal while disposing of S.A.No.333 of 2019 on 26.12.2019, issued certain directions. They read as under:

“i) The 1st respondent Bank is directed to defer the auction sale of the application schedule property slated on 27.12.2019 subject to the condition that the applicant deposits 10% of the outstanding dues claimed in the Sale Notice dt.25.11.2019, on or before time and date of auction i.e., 27.12.2019, directly to the 1st respondent Bank;

ii) The applicant shall pay balance 90% of the outstanding dues claimed by the 1st respondent Bank in the Sale Notice dt.25.11.2019 plus all costs, charges and expenses incurred by the 1st respondent Bank on or before 04.01.2020;

iii) In the event of failure of any of the aforesaid conditions, the 1st respondent Bank shall be at liberty to proceed with the auction sale of the application schedule property in accordance with law;

iv) No order as to costs.”

3. According to the 2nd respondent, 10% of the amount was deposited on 27.12.2019. According to the petitioner-Bank, auction could not be conducted on the said date as there was no response to the auction notice. Second respondent filed M.A.Nos.1 and 2 of 2020 before the Debts Recovery Tribunal-I at Hyderabad seeking extension of time regarding the second direction fixed by the Tribunal. The Tribunal, by Order dated 08.01.2020, granted further time as sought by the 2nd respondent. The operative portion of the order reads as under:

“By having regard to the submissions made by the learned counsel for the petitioner that the petitioner is ready to deposit the balance 90% of the outstanding dues by 10.01.2020, it is just and proper to give time to the petitioner till said date. Since the petitioner is ready and willing to deposit the entire outstanding dues of the borrower/guarantor, no prejudice would be caused to the Bank. As far as the title deeds are concerned, in the order dt. 26.12.2019 it has been made it clear that no directions can be given by this Tribunal to return the title deeds to the petitioner herein and the petitioner has to approach appropriate forum.

In view of the above, the petitioner/applicant is hereby directed to deposit the balance 90% amount being ₹ 92,56,274.27 ps before this Tribunal by 10.01.2020, failing which the respondent Bank shall be at liberty to proceed with the sale of the property. ”

4. As per the directions of the Tribunal, 2nd respondent deposited the said money on 10.01.2020 and filed Memo before the Tribunal to that extent.

5. These two Writ Petitions are filed questioning the orders passed by the Tribunal on 26.12.2019 in S.A.No.333 of 2019 and orders passed by the Tribunal in M.A.Nos.1 and 2 of 2020 in S.A.No.333 of 2019 on 08.01.2020.

6. Learned counsel for petitioner-Bank made two fold submissions. Firstly, having disposed of S.A.No.333 of 2019 on 25.12.2019, the Tribunal became *functus officio* and has no powers and competence to entertain the interlocutory applications in disposed of S.A., and to pass orders. Therefore, the order dated 08.01.2020 made in interlocutory applications is *ex facie* illegal, without jurisdiction and competence. Once this order is set aside on the said ground, 2nd respondent cannot claim any more that he has deposited the full sale consideration and, therefore, the Bank has liberty to dispose of the secured asset to recover the amount due to the Bank. Secondly, it is contended that at the instance of third party, who is no way concerned with the extension of loan facility and bank's decision to recover the money due from the borrowers, the Tribunal could not have entertained the S.A., and pass orders authorizing him to deposit money. It is further contended that Bank has to receive more money than what is deposited by the 2nd respondent and, therefore, it does not amount to payment of entire due to the Bank and on that ground also, entire proceedings are vitiated.

7. It is contended by the petitioner-Bank that as directed by the Tribunal, first 10% to be deposited before the date and time of auction, whereas the money was not deposited before the date and time of the auction.

8. In reply, learned counsel for 2nd respondent clarified that amount was paid by RTGS and it takes time for the Bank to notify about the deposit of the amount and for this, the petitioner-Bank cannot blame the 2nd respondent. At any rate, no auction was conducted on the scheduled date and, therefore, the time of deposit of the amount has no legal significance.

9. Further, seeking enforcement of Agreement of Sale, 2nd respondent filed O.S.No.1001 of 2019 pending in the Court of XI Additional Chief Judge, City Civil Court at Hyderabad and having come to know that very same property is now proposed for sale, he has filed S.A., challenging the sale notice. Section 17 of the Act, 2002 has wider import and any person aggrieved by the actions taken by the secured creditor, proceedings can be initiated under Section 17 of the Act, 2002. He would further submit that as the Tribunal is competent to deal with the applications filed under Section 17, after the disposal of the application, Tribunal is also competent to deal with the application filed seeking clarification/seeking review and further direction and it cannot become *functus officio* after the

disposal of the application filed under Section 17. Therefore, the orders passed by the Tribunal on 08.01.2020 are within the competence of the Tribunal. He would submit that as directed by the Tribunal, the entire amount directed to be deposited by the 2nd respondent was deposited before the Tribunal on 10.01.2020.

10. The Debts Recovery Tribunal was validly constituted under the Recovery of Debts and Bankruptcy Act, 1993, and the Tribunal is competent to deal with all the matters arising out of the Act, 2002 as provided in Section 17. Section 17 has wide import and enables any person aggrieved by any decision or action taken by the secured creditor under the Act, 2002 to file application before the Tribunal under Section 17 and seek appropriate relief. Since, 2nd respondent was aggrieved by the auction sale notice proposing to sell the secured asset, which he claimed to have purchased from the borrowers and the suit was already filed seeking to grant decree of specific performance of contract, he is legitimately entitled to prosecute the application under Section 17 of the Act, 2002.

11. Having taken note of the fact that Bank is claiming certain amounts due from the borrowers and that 2nd respondent was willing to pay the entire amount due to the Bank and to prosecute his pending suit, the Tribunal passed equitable order while disposing of the S.A.No.333 of 2019 on 26.12.2019. The Tribunal fixed reasonable

time to the 2nd respondent to deposit the amounts, first 10% and balance 90%, in two instalments. As per the directions, first instalment was deposited on 27.12.2019. 2nd respondent has filed application seeking extension of time to deposit the balance amount. Having considered the matter in detail, the Tribunal was inclined to grant further time to comply with the earlier direction and accordingly the order was complied.

12. Since Tribunal was competent to deal with the applications filed under Section 17 of the Act, 2002 by the 2nd respondent, it does not become *functus officio* after the orders are passed. As a consequence to jurisdiction vested in the Tribunal to deal with an application filed under Section 17 of the Act, it is inherent for the Tribunal to pass incidental orders. The Tribunal is still competent to pass further orders in any application filed after the disposal of S.A. It is implicit in such an application that the order is intact. The issue of specifying time within which an order has to be carried out will arise only after a decision has been given. Such direction is independent of the decision. Therefore, in an application seeking extension of time, reopening of the case on merits is not involved. Therefore, considering the application filed to enlarge the time fixed in S.A., is within the jurisdiction of the Tribunal. We do not see any error committed by the Tribunal in granting further time to deposit the amount.

13. In addition to the aspects urged by the learned counsel for petitioner, we are surprised to notice two aspects: firstly, the Bank was concerned about dues from the borrower and was proceeding against the borrower to recover the entire amount due. In the instant S.A., the Tribunal gave directions enabling the 2nd respondent to deposit the amount due to the Bank from the borrower. By virtue of this exercise, the amount due to the Bank is recouped. Therefore, we do not see any justification for the Bank to prosecute this kind of litigation. We would have appreciated if the borrower ventilates some grievance as his property is involved, but not the Bank. It is nothing but frivolous litigation prosecuted by the Bank against its own interest. On account of prosecuting this litigation, for the last about three years, the amount deposited by the 2nd respondent is lying in the account of the Tribunal and not realized by the Bank. This litigation has acted as counter productive to the interests of the Bank.

14. Secondly, while petitioner-Bank was opposing the orders of the Tribunal on the ground that Tribunal has no jurisdiction to entertain the S.A., filed by the 2nd respondent under Section 17 of the Act, 2002 and at any rate, the Tribunal has no jurisdiction to grant further orders after the disposal of the S.A., in paragraph-17 of the affidavit filed in support of W.P.No.3315 of 2020, the petitioner-Bank

seeks direction to release the deposited amount. The petitioner-Bank cannot blow hot and cold and resort to such litigation practices.

15. We also do not see merit in the claim of the petitioner-bank that 10% of the amount was not deposited before the time of conducting auction as Bank was unsuccessful in conducting auction on the said date. By depositing 10% on the date of auction and balance 90% later, the 2nd respondent was clearing the loan amount due from the borrower. Thus, no injustice is caused to the Bank even assuming that the amount was not deposited before auction time. When Bank was unsuccessful in conducting auction, but money is recovered, it could not have prosecuted this kind of litigation on this issue.

16. Learned counsel for the petitioner-Bank was pointing out that the Bank cannot release the title deeds in favour of the 2nd respondent. We failed to understand how the Bank is prosecuting this litigation even without understanding the orders passed by the Tribunal. The Tribunal categorically directed that the 2nd respondent has to work out his remedies by approaching appropriate forum to secure title deeds of the secured asset and the Tribunal has not given any direction to the Bank to return the title documents. Therefore, interest of the Bank to this extent was already protected by the Tribunal.

17. Learned counsel for the petitioner-Bank submits that still ₹ 9.00 lakhs are due to the Bank. It is appropriate to notice that from the order dated 08.01.2020, the Tribunal specified the amount to be deposited by the 2nd respondent as ₹ 92,56,274.27 ps., which was already deposited by the 2nd respondent. Learned counsel for 2nd respondent also points out that as per Notice under Section 13(2) of the Act, 2002, dated 11.02.2019, the outstanding amount mentioned was ₹ 85,71,032.90 ps. The same was also mentioned in the auction notice. But the upset price prescribed was ₹ 133.35 lakhs. Therefore, what was deposited by the 2nd respondent is as per the directions of the Tribunal and more than what was claimed by the Bank. If petitioner-Bank has grievance on the amount determined by the Tribunal and that the Bank is entitled to receive some more amount, the Bank ought to have availed the remedy of appeal provided under Section 18 of the Act, 2002 to challenge the orders of the Tribunal to that extent. Instead, these Writ Petitions are filed contending that Tribunal has no jurisdiction to deal with the Securitization Application as well as Interlocutory Applications filed after disposal of the S.A., on the ground that it has become *functus officio* after the disposal of the S.A. At any rate, Bank is not precluded from proceeding against its borrower if some more amount is due, but on that ground we cannot hold the Orders of the Tribunal as vitiated.

18. Writ Petitions fail and are accordingly dismissed with costs of ₹ 10,000/- (Rupees ten thousand only) in each of the Writ Petitions, to be paid to the Secretary, High Court Legal Services Committee, Hyderabad, within a period of four weeks from the date of receipt of copy of this order. On such payments, the learned counsel for petitioners shall file Memo enclosing proof of payment within one week thereafter. Pending miscellaneous applications, if any, shall stand closed.

P.NAVEEN RAO, J

NAGESH BHEEMAPAKA, J

Date: 06.02.2023

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Note: L.R. copy to be marked: Yes

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**HONOURABLE SRI JUSTICE P.NAVEEN RAO
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HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

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