APHC010260532024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

Bench Sr.No:-5 [3443]

WRIT PETITION NO: 13361 of 2024

M/s. Vms Ferro Alloys Private Limited, ...Petitioner

Vs.

The Authorised Officer and Others ...Respondent(s)

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Padala Venkata Sriram Reddy, Advocate(s) for Petitioner(s)

, Advocate(s) for Respondent(s)

CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE NINALA JAYASURYA

DATE : 1st July 2024

<u>PER DHIRAJ SINGH THAKUR, CJ (Oral):</u>

I.A.No.1 of 2024

Requirement of filing the certified copy of the common order in Appeal No.75 of 2022 and Appeal No.41 of 2023 on the file of the Debts Recovery Appellate Tribunal at Kolkata, is dispensed with.

Accordingly, this I.A. is disposed of.

W.P. No.13361 of 2024

The petitioner/borrower approached the Debt Recovery Tribunal, Visakhapatnam, against the proceedings initiated by the secured creditor/respondent Nos.1 and 2 regarding the procedure adopted by the respondents, being contrary to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and the Rules framed thereunder.

The Debt Recovery Tribunal set aside the sale notice and the consequent auction against which respondent Nos.1 and 2 preferred an Appeal bearing Appeal No.75 of 2022 before the Debt Recovery Appellate Tribunal, Kolkata.

The Debts Recovery Appellate Tribunal, Kolkata, by virtue of the order impugned, dated 13.05.2024, upheld the order of the Debt Recovery Tribunal, Visakhapatnam. However, the grievance of the petitioner is that without there being any prayer by any of the parties, the Appellate Tribunal directed the Secured Creditor to refund the amount to the Auction Purchaser along with interest from the date of deposit till the date of actual payment at the applicable Bank rate.

Learned counsel for the petitioner would submit that the direction issued by the Appellate Tribunal is contrary to Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules, 2002"), which envisages that on sale of immovable property, while 25% of the sale price shall be paid on the same day or not later than next working day, as the case may be, the balance amount of purchase price shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmed sale of the immovable property or such extended time as may be agreed upon by writing between the purchaser and the secured creditor, in any case not exceeding three months. Rule 9(5) further envisages that any default in payment of the aforesaid in depositing the money shall result in forfeiture to the secured creditor and the property shall be resold.

According to learned counsel for the petitioner, Rule 9(4) of the Rules, 2002, was not observed as the sale consideration was remitted after the due date without there being any extension whatsoever. This fact, it is stated, had been noticed specifically by the Appellate Tribunal in its order and yet, while overlooking the provisions of Rule 9(5) of the Rules, 2002, the direction impugned had been issued.

Issue notice to the respondents.

Personal notice to respondent No.3 is also permitted.

In the meantime, the operation of the order passed by the Appellate Tribunal to the extent it directs refund of the amount to the auction purchaser shall remain stayed.

List on 22.07.2024.

DHIRAJ SINGH THAKUR, CJ

NINALA JAYASURYA, J

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