

(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)
MONDAY, THE FIRST DAY OF JULY,
TWO THOUSAND AND TWENTY FOUR



:PRESENT:

THE HONOURABLE SRI DHIRAJ SINGH THAKUR, CHIEF JUSTICE

AND

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION NO: 13361 OF 2024

Between:

M/s. VMS Ferro Alloys Private Limited, Rep. by its Managing Director, Konda Mohan Reddy, Kunchanapalli Village, Tadepalli Mandal, Guntur District

...Petitioner

AND

1. The Authorised Officer, Indian Bank Head Office at 254-260 Avvai Shanmugam Salai, Royyapettah Chennai.
2. The Branch Manager, Indian Bank, Governorpet Branch, D.No 27-6-170, Prakasam Road, Governorpet, Vijayawada.
3. C-Tel Info Systems Private Limited, Pusa Lane, Karol Bagh, New Delhi, Central Delhi.

...Respondents

WHEREAS the Petitioner above named through its Advocate M/s PADALA VENKATA SRIRAM REDDY presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ or direction more particularly one in the nature of Writ of Certiorari by setting aside the findings of the learned Appellate Tribunal Appeal No 75 of 2022 and 41 of 2023 dated 13-05-2024 with regard to the finding that the Secured Creditor is directed to refund the amount to the auction purchaser along with

interest from the date of deposit till the date of actual payment at interest applicable in the bank on the fixed deposit on the relevant date of deposit as it is against to Rule 9(4) and 9(5) of the Security Interest (Enforcement) Rules, 2022 and consequently forfeit the deposited amount as envisaged under Rule 9(5) of the Security Interest (Enforcement) Rules, 2022

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri Padala Venkata Sriram Reddy, Advocate for the Petitioner and of Sri D Satyanarayana, Standing Counsel for Respondent Nos. 1 & 2, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Authorised Officer, Indian Bank Head Office at 254-260 Avvai Shanmugam Salai, Royyapettah Chennai.
2. The Branch Manager, Indian Bank, Governorpet Branch, D.No 27-6-170, Prakasam Road, Governorpet, Vijayawada.
3. C-Tel Info Systems Private Limited, Pusa Lane, Karol Bagh, New Delhi, Central Delhi.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted, on or before 22.07.2024, on which date the case stands posted for hearing.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay further proceedings pursuant to the order of the Appellate

Tribunal with regard to the finding "the Secured Creditor is directed to refund the amount to the auction purchaser along with interest from the date of deposit till the date of actual payment at interest applicable in the bank on the fixed deposit on the relevant date of deposit" till pending disposal of WP No. 13361 of 2024, on the file of the High Court.

The Court made the following: ORDER

"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."

Sd/- SK. MD. RAFI
A ASSISTANT REGISTRAR

//TRUE COPY//

For A:

SECTION OFFICER

To,

1. The Authorised Officer, Indian Bank Head Office at 254-260 Avvai Shanmugam Salai, Royyapettah Chennai.
2. The Branch Manager, Indian Bank, Governorpet Branch, D.No 27-6-170, Prakasam Road, Governorpet, Vijayawada.
3. C-Tel Info Systems Private Limited, Pusa Lane, Karol Bagh, New Delhi, Central Delhi.(No's 1 to 3 by RPAD- along with a copy of petition and affidavit)

4. One CC to SRI. PADALA VENKATA SRIRAM REDDY Advocate
[OPUC]
5. One CC to Sri D Satyanarayana Standing Counsel [OPUC]
6. Two spare copies



HIGH COURT

HC,J

&

NJSJ

DATED:01/07/2024

LIST ON 22.07.2024

NOTICE BEFORE ADMISSION

WP.No.13361 of 2024

STAY

