IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WA.No. 1309 of 2015 () IN WP(C).6784/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 6784/2013 of HIGH COURT OF KERALA DATED 03-12-2014

APPELLANT(S)/PETITIONERS IN THE WRIT PETITION:
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1. SINDHU UNNIKRISHNAN AGED 35 YEARS
   W/O. K.N.UNNIKRISHNAN PROPRIETRIX M/S. SONU TEX DOOR NO 32/1757
   A NETAJI ROAD PADIVATTOM EDAPPALLY KOCHI 24

2. V.K.RADHAMANI AMMA AGED 66 YEARS
   W/O.K.A NARAYANAN PILLAI KALIKARUMBAN THARAYIL HOUSE
   PADIVATTOM EDAPPALLY KOCHI 682 024

3. K.N.UNNIKRISHNAN AGED 47 YEARS
   S/O.K.A NARAYANAN PILLAI KALIKARUMBAN THARAYIL HOUSE
   PADIVATTOM EDAPPALLY KOCHI 682 024

   BY ADVS.SRI.M.S.UNNIKRISHNAN
   SRI.S.V.BALAKRISHNA IYER (SR.)

RESPONDENT(S)/RESPONDENTS IN THE WRIT PETITION:
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1. STATE BANK OF INDIA
   SME CITY CREDIT CENTRE
   1ST FLOOR VANKARATH TOWERS NH BY-PASS JUNCTION
   PADIVATTOM PALARIVATTOM ERNAKULAM 682 024
   REPRESENTED BY ITS ASSISTANT GENERAL MANAGER

2. STATE BANK OF INDIA
   KALOOR BRANCH KALOOR 682017 REPRESENTED BY ITS BRANCH
   ` MANAGER

3. GENERAL MANAGER
   LOCAL HEAD OFFICE STATE BANK OF INDIA S S KOVIL ROAD
   THAMPANUR THIRUVANANTHAPURAM 695 001

   BY SRI.GEORGE THOMAS (MEVADA) (SR), SC, SBI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ
&
A.M. SHAFFIQUE, J.
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W.A.No.1309 of 2015
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Dated this, the 10th day of July, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants as well as the learned counsel appearing for the Bank.

2. This writ appeal has been filed against the judgment dated 3rd December, 2014 in WP(C) No.6784/2013. The writ petition was filed by the appellants challenging Exts.P11 and P16. By Ext.P11, Bank has refused to renew the cash credit facility of ₹68,00,000/- and Bank called back the facility sanctioned to the appellants and requested the petitioners to liquidate the entire outstanding including accrued interest. It was further mentioned in Ext.P11 that failing the payment aforesaid, the Bank shall be constrained to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). Subsequent to the issuance of Ext.P11, Bank issued notice under

Section 13(2) dated 2nd April, 2013 calling upon them to discharge their full liability stated thereunder within 60 days from the date of the notice. Bank had filed OA No.220/2014 for recovery of amount of more than ₹80,00,000/- on 22nd November, 2013.

3. The petitioner filed WP(C) No.6784/2013 in February 2014 praying for the following reliefs;

> "(i) Declare that the Exhibit P-11, recalling the credit facilities extended to the 1st petitioner and the proposal for proceedings under SARFAESI Act are illegal and without jurisdiction.
>
> (ii) issue a writ of certiorari or other appropriate writ, order or direction quashing Exhibit P16;
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> (iii) Issue a writ of certiorari or other appropriate writ, order or direction quashing Exhibit P-11;
>
> (iv) Declare that the withdrawal of drawing power given to the 1st petitioner was withdrawn by the respondent bank without any justification and the default, if any, in repaying the amount having been deliberately created by the 1st respondent bank, it is not entitled to resort to the provisions of the SARFAESI act for realization of amounts covered by Exhibit P11 and P16.
>
> (v) Declare that, as the facilities mentioned in Ext.P11 were recalled by the 1st respondent bank without any justification and the default, if any, having been deliberately created by the 1st respondent bank, it is not entitled to resort to the

> provisions of SARFAESI Act for realization of the amounts covered by Ext.P11".

4. Learned counsel for the appellants has further contended that in fact the action was taken by the Bank on account of them having filed various complaints against the Punjab National Bank on which First Information Report was also registered and case is under investigation. He submits that there was a lot of pressure on the part of the petitioners to withdraw the complaint and since the petitioners did not yield to the said request, several actions were taken against the petitioners and the aforesaid action of the Bank is also sequel to the said complaint.

5. Counter affidavit has been filed in the writ petition by the Bank by which the Bank sought to justify its action for withdrawing the credit facility and for issuing notice under Section 13(2) of the SARFAESI Act. Petitioners in the meantime also filed a counter claim in OA No.220/14 in February, 2015 raising a claim of ₹75,00,000/-. Learned Single Judge by the impugned judgment considered the various submissions raised by the petitioners on the fact and arguments challenging Ext.P11 and ultimately

repelled the challenge to Ext.P11.

6. In so far as the notice issued under Section 13(2), it was observed that it was open for the petitioners to file an objection under Section 13 (3A) of the Act and if Bank takes any action under Sec.13(4), the petitioners can seek their remedy under SARFAESI Act, 2002. Learned counsel for the appellants in support of the appeal contends that there was no valid reason for withdrawal of the credit facility. It is submitted that vague reasons were given in Ext.P11 letter for withdrawal of the facility. Petitioners were not asked to show details of statement and the account was actually in fact not NPA so as to permit the Bank to withdraw the facility or to proceed under the SARFAESI Act.

7. Various submissions pertaining to the factual aspects have been sought to be raised by the learned counsel for the appellants. He has also sought to challenge various findings and conclusions recorded by the learned Single Judge in the judgment. Learned counsel further submits that there was no valid ground for issuance of Exts.P11 and P16. Learned counsel for the Bank refuted the submission and contended that even from the reply Ext.P12 sent by the bank regarding credit summation, it was clear

that there was steep fall of business which clearly indicated that sufficient stock was not available and taking into account the over all facts and circumstances, giving valid reasons, the credit facility was withdrawn. It is submitted that Bank has statutory right to proceed under the Act on account of the withdrawal of the credit facility and petitioners having failed to discharge their liabilities.

8. We have considered the submission of the parties and perused the records. Ext.P11 which was under challenge in the writ petition is a letter issued by the Bank withdrawing the cash credit facility of ₹68,00,000/- and the effect of which was that the petitioners' drawing power has ceased and the entire outstanding was demanded. Admittedly, the petitioners had obtained credit facilities from the Bank which was increased from time to time and at the relevant time, credit facility amounting to ₹68,00,000/- was being availed by the petitioners. In the writ petition, complaint essentially which was raised by the petitioners was that the Bank had committed beach of contract in exercising the power to recall the facility. Petitioners asked the Court to adjudicate upon Ext.P11 letter raising various issues including the details of the accounts and other factors. Ext.P16 notice under

Section 13(2) was again issued by the Bank under the SARFAESI Act in view of the fact that petitioners failed to liquidate the outstanding liability. As has also been noted above, the Bank had already filed OA No.220/2014 which although was filed on 22nd November, 2013 was numbered subsequently on account of some defects, in which OA, petitioners have already appeared and has filed their counter claim and set off for ₹75,00,000/-.

9. We are of the view that the issues which were sought to be raised by the petitioners in the writ petition were essentially issues of fact which could not have been gone into in a writ proceedings under Article 226 of the Constitution of India. The writ petition was filed in February, 2014 whereas the OA was already filed on 22nd November, 2013 in which petitioners had already put in appearance.

10. We are of the view that all issues of fact can be gone into in the OA. As far as notice under Section 13(2) of the Act is concerned, petitioners have a statutory remedy under the Act in the event any measures are taken by the Bank under Section 13 (4) of the Act. We are of the view that the learned Single Judge did not commit any error in dismissing the writ petition leaving

the petitioners to avail their remedies before the appropriate forum. We only observe that the observations made by the learned Single Judge in its judgment while dismissing the writ petition may not be treated to be an expression of opinion on the claim of the petitioners or the Bank and in appropriate forum, the issues raised may be decided in accordance with the materials on record.

Subject to the above observations, the writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge