IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

WA.No. 1448 of 2015 () IN OP (DRT).34/2015

AGAINST THE JUDGMENT IN OP (DRT) 34/2015 DATED 09-06-2015

APPELLANT(S)/RESPONDENTS 1 & 2 :-

1. THE STATE BANK OF INDIA, KUNNAMKULAM BRANCH,
   REPRESENTED BY ITS MANAGER,
   P.O.KUNNAMKULAM, THRISSUR DISTRICT - 680 019.

2. THE CHIEF MANAGER (RURAL)
   (THE AUTHORISED OFFICER), STATE BANK OF INDIA,
   REGIONAL BUSINESS OFFICE, P.O.THRISSUR - 680 001.

BY ADV. SRI.S.EASWARAN

RESPONDENT(S)/PETITIONER & RESPONDENTS 3 & 4 :-

1. DOMINIC THANIKKAL, AGED 46 YEARS,
   S/O.VARGHESE, PROPRIETOR, G.G.M.INDUSTRIES,
   THANIKKAL HOUSE, NEAR K.S.E.B., P.O.ERUMAPETTY,
   KUNNAMKULAM, THRISSUR - 680 584.

2. LISSY DOMINIC, THANIKKAL HOUSE,
   P.O.ERUMAPETTY, THRISSUR DISTRICT - 680 584.

3. SANKARAN EZHUTHACHAN,
   AYYAPPAN PARAMBIL HOUSE, P.O.KILLANNUR,
   THRISSUR DISTRICT - 680 581.

BY SRI.M.R.VENUGOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

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W.A. No. 1448 OF 2015

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Dated this the 8th day of July, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent/writ petitioner. This writ appeal has been filed against the judgment dated 09.06.2015 passed in O.P.(DRT) No.34 of 2015 by which judgment the learned Single Judge disposed of the writ petition. Following were observed by learned Single Judge in paragraphs 4, 5 and 6:

> "4. This Court while entertaining the writ petition directed the petitioner to deposit Rs.10 lakhs. It is submitted that Rs.10 lakhs has been deposited as per the above direction.
>
> 5. I am of the view, in the Securitisation Application, the only issue is based on the grounds now sought in amended application as well as the legality of the demand notice under Section 13(2) of the SARFAESI Act, therefore, the Tribunal shall dispose of the entire matter within a period of four months from today.
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> 6. In view of the fact that Rs.10 lakhs has been deposited by the petitioner, the SARFAESI proceedings

against the petitioner shall be kept in abeyance till the disposal of this Securitisation Application.”

2. The learned Single Judge has noted in the judgment that at the time of granting of interim order, the petitioner was directed to deposit Rs.10 lakhs which deposit was made. Considering the aforesaid fact, the learned Single Judge directed the Tribunal to dispose of the entire matter within a period of four months from date of judgment. The Bank, aggrieved by the said judgment, has come up with the appeal.

3. The Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (for short 'SARFAESI Act'), 2002 by issuing notice under Section 13(2) of the Act. The Bank thereafter filed an application before the Chief Judicial Magistrate for taking possession of the mortgaged assets in accordance with Section 14 of the Act. An Advocate Commissioner was appointed by the Chief Judicial Magistrate who issued a notice to the petitioner dated 18.06.2012, Ext.P11 informing that the Chief Judicial Magistrate Court, Thrissur has appointed the Advocate

Commissioner to take possession of the secured property and to hand over it to the Bank. The petitioner was directed either to remit the amount to the Bank or hand over the physical possession of the property mortgaged by him. Petitioner, after receiving notice, filed an application before the Debt Recovery Tribunal under Section 17 of the Act, being S.A. No. 562/2012. In the application an interim order was passed by the Tribunal which came to be vacated by subsequent order dated 20.11.2014. Before the order dated 20.11.2014 was passed, the petitioner had filed an interlocutory application before the Tribunal seeking certain amendments in the application. That application was allowed by the Tribunal on 12.06.2014. The petitioner filed the writ petition, being O.P.(DRT) No.34/2015, in this Court with a prayer to set aside Ext.P10 order passed by the Tribunal in I.A. No.1897 of 2012 with a further prayer to consider I.A. No.1897 of 2012 afresh taking into account all relevant matters relating to Section 13 of the SARFAESI Act, 2002.

4. Learned Single Judge entertained the writ petition and directed the petitioner to deposit the amount of Rs.10 lakhs

which amount is said to be deposited. The learned Single Judge disposed of the writ petition directing the Tribunal to dispose of the entire issue within a period of four months from the date of judgment. Learned Single Judge further directed that in view of the fact that Rs.10 lakhs has been deposited by the petitioner, the SARFAESI proceedings shall be kept in abeyance till disposal of the Securitisation Application, pending before the DRT.

5. Learned counsel for the Bank contends that in fact the application filed by the petitioner before the DRT was not maintainable. It is submitted that the contention of the petitioner that Bank had not taken any measures under Section 13(4) to enable the petitioner to avail the remedy under Section 17 is not correct. Before filing an application before CJM for taking possession, the Bank cannot take measures under Section 13(4), hence the application was clearly not maintainable. He further submits that granting four months time by the learned Single Judge to decide the application and granting of interim order staying the proceedings till the application is decided, is unjustifiable.

6. Learned counsel for the respondent/writ petitioner, refuting the submissions of learned counsel for the Bank, submits that notice by Advocate Commissioner for taking possession of the property was received and objected to by the petitioner, the Bank shall be deemed to invoke the measures under Section 13 (4) and the application was clearly maintainable. It is further submitted by learned counsel for the petitioner that total outstanding being Rs.44 lakhs and petitioner having deposited Rs.10 lakhs, the learned Single Judge has rightly exercised its jurisdiction by passing an order directing the DRT to dispose the entire matter within a period of four months. It is submitted that though the amendment sought was allowed by the Tribunal, but the facts mentioned therein was not looked into by the Tribunal while passing Ext.P10 order.

7. Learned counsel for the appellant, in support of his submission, has relied on the judgments reported in **Standard Chartered Bank v. V. Noble Kumar and others** [(2013) 9 SCC 620] and **Union of India and another v. Kriloskar Pneumatic Co. Ltd.** [(1996) 4 SCC 453]. The first judgment has been relied

on for the proposition that application under Section 14 does not mean any invocation of measures under Section 13(4) and the application is not maintainable. By the second judgment he relied on the proposition that the High Court cannot issue any direction to act contrary to law.

8. Learned counsel for the petitioner in support of her submission has relied on the Division Bench judgment reported in **Ratan Kumar and others v. State Bank of India and others** [2013 KHC 2980] [parallel citation is AIR 2013 ALL. 115].

9. We have considered the submission of learned counsel for the parties and perused the records.

10. Learned Single Judge having directed consideration of the application which is admittedly pending before DRT, we are of the view that the submissions which have been raised by learned counsel for the appellant that the application was not maintainable and the appeal of the petitioner under Section 17 need not be adjudicated in this proceedings, cannot be accepted. The application being pending, it is open for the Bank to raise all its objections to the maintainability of the

application and all these are permissible under law. The Tribunal is yet to take steps as directed by this Court. We do not intend to go into the issue as noted above. Before the Tribunal, both the parties are free to raise all their submissions as permissible under law.

11. In so far as the submission of learned counsel for the appellant that High Court under Article 226 of the Constitution cannot pass any direction contrary to law, we do not find any such direction in the judgment which can be said to be contrary to law. The High Court in exercise of its equitable jurisdiction has directed the DRT to dispose of the application within a period of four months. Under the orders of High Court the petitioner has deposited an amount of Rs.10 lakhs. It has been submitted by learned counsel for the Bank that the total amount is about Rs.44 lakhs. As the petitioner has deposited a substantial amount, we do not find any error in the direction of learned Single Judge to dispose of the application within a period of four months.

12. Learned counsel lastly contended that the period of four months is an excessive time and it should be reduced to

four weeks or six weeks. The Tribunal has to hear all parties before taking a final decision on the application. Hence the time given is reasonable and we are not persuaded to interfere with the four months time granted by learned Single Judge.

In view of the foregoing discussions we do not find any good ground to interfere with the judgment of learned Single Judge. Subject to the observation as made above, the Writ Appeal is dismissed.

Ashok Bhushan,
Chief Justice.

A.M. Shaffique,
Judge.

ttb/09/07