THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE SHANKAR NARAYANA

WRIT PETITION No.35840 of 2015

ORDER: (*Per Hon'ble Sri Justice A.Shankar Narayana*)

The petitioners have sought a Mandamus to declare the notice, dated 20.10.2015, vide C.C. Account No.30699480850 issued by the 3rd respondent Bank under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), as illegal and also to declare the action of the respondents 1 to 3 in not releasing the mortgage documents bearing Nos.772/2007, dated 20.03.2007, and 2435/2007, dated 20.07.2007, which are described as item No.1 in Memorandum of Deposit of Title Deeds, dated 11.08.2008, in connection with their C.C.Account No.30699480850, by not making the renewal of the said account by reducing the limit to Rs.20.00 lakhs from existing Rs.40.00 lakhs, as illegal.

The 1st petitioner has availed financial assistance from the 3rd respondent Bank to the limit of Rs.40.00 lakhs to carry out his business in readymade and cloth emporium and pursuant thereto, executed a Memorandum of Deposit of Title Deeds, dated 11.08.2008, creating equitable mortgage in prompt repayment of the loan amount, description of which is given in paragraphs 3A and 3B of the affidavit.

When the petitioners defaulted in repayment of amounts under the said credit account, the 3rd respondent Bank initiated measures by initially issuing notice, dated 20.10.2015, under Section 13 (2) of the Act. Having made a request for reducing the credit limit from Rs.40.00

lakhs to Rs.20.00 lakhs and for releasing one of the title deeds, the petitioners filed the instant writ petition seeking the aforementioned reliefs.

Common counter is filed on behalf of the respondents 1 to 3 raising various pleas. The main ground agitated by the respondent – Bank is that the 1st petitioner, who is Proprietor of the Firm, was found to have been a defaulter to the Bank/Financial Institution to the tune of Rs.3,26,299/- as per the report of the Credit Information Bureau (India) Limited (CIBIL), which is one of the Credit Rating Agencies in India, thus, assessing the conduct of the 1st petitioner, the request of the 1st petitioner was negatived, thereby refusing to release one of the title deeds covered by the Memorandum of Deposit of Title Deeds, through which security was furnished to the Bank. Relevant documents were filed by the respondent Bank to substantiate its stand.

Heard Sri Nazeer Khan, learned counsel for the petitioners, and Sri B.S.Prasad, learned counsel for the respondent – Bank.

Learned counsel for the petitioners would submit that the 1st petitioner has never availed any loan from any other Banks or Financial Institutions and, therefore, obtaining clearance and submitting it to the respondent – Bank does not arise. It is also his submission that the respondent – Bank is arbitrarily not acceding to the petitioners' request for reducing the credit limit from Rs.40.00 lakhs to Rs.20.00 lakhs and for releasing one of the title deeds, even though the property covered by the other title deed would satisfy the limit and, therefore, sought to grant the reliefs.

Learned standing counsel for the respondent – Bank would submit that when the petitioners addressed a letter, dated 11.08.2015, annexing thereto certain documents requesting to furnish detailed information in connection with CC Account and other relevant particulars, the Bank has issued reply dated 12.08.2015 acceding to the request of the petitioners by furnishing relevant information, but also made it clear that CIBIL report obtained on the loan account of the petitioners revealed that one account was in write-off status on the 1st petitioner's name, therefore, requested to immediately resolve the issue and obtain a certificate of closure of the account within a period of 15 days from the date of the said reply with default consequences. It was also intimated through the said reply that due to write-off account in petitioners' CIBIL report, their sanctioning authority rejected the file for renewal of the account and, therefore, the petitioners are not entitled to the reliefs therein. Learned counsel would further submit that the notice issued under Section 13 (2) of the Act cannot be questioned, as provisions of Section 13 (3-A) of the Act would enable the petitioners to approach the Bank by raising objections or making any request and, therefore, sought to dismiss the petition.

It is clear from the documents filed by the respondent Bank that CIBIL has given a report showing the name of the 1st petitioner with all relevant details indicating that he has availed car loan with Account No.2576080 of HDFC Bank and the said loan was not cleared. There is a mention about the said report in the reply, dated 12.08.2015, given by the respondent Bank, which is filed by the petitioners themselves. It is, thus, clear that when the petitioners refused to get a certificate of closure of the account with HDFC Bank, certainly, their request for reducing the credit limit from Rs.40.00 lakhs to Rs.20.00 lakhs and for releasing one of the title deeds cannot be accepted.

Concerning the 1st relief sought for by the petitioners, the notice issued under the provisions of Section 13 (2) of the Act would not give rise to seek any relief, as by the said notice, the petitioners are required to raise their objections, if any, or submit a representation to the Bank as provided under Section 13 (3-A) of the Act and only when measures are initiated under Section 13 (4) of the Act by the Bank, the borrower or guarantor can challenge such measures either under Section 17 of the Act by approaching the Debts Recovery

Tribunal or by way of invoking writ jurisdiction in appropriate cases. Hence, we do not find any merit in the instant writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE SHANKAR NARAYANA

26.11.2015

v v