

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.5188 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition has had a checkered history. The petitioner herein is the guarantor for a loan obtained by the third respondent. The first respondent-bank invoked the jurisdiction of the Debt Recovery Tribunal ('DRT') against the third respondent, the petitioner and others.

The order of the DRT dated 25.08.2003, the consequential recovery certificate dated 01.10.2003 and the sale certificate dated 05.12.2005 were subjected to challenge before this Court in W.P.No.966 of 2006 wherein the petitioner alleged that the fifth respondent had played fraud on them; and the auction held by the Recovery Officer in favour of the ninth respondent herein was a nullity and was liable to be quashed. A Division Bench of this Court allowed the said Writ Petition, by its order dated 17.01.2007, holding that the sale proceedings were tainted by irregularities; and the proceedings initiated by the Recovery Officer was vitiated by a patent violation of the rules of natural justice. The Division Bench granted liberty to the bank and the Recovery Officer to initiate fresh proceedings for recovery of the dues in terms of the decree passed by the DRT, subject to the order which may be made by it on an application to be filed by the petitioner for setting aside the *ex parte* decree.

Aggrieved thereby, both the second and the ninth respondent herein invoked the jurisdiction of the Supreme Court. By its order, in C.A.Nos.1388 & 3389 /2007 dated 27.08.2014, the Supreme Court disposed of the appeals permitting the petitioner herein to file an application under Rule 61 of the Second Schedule to the Income Tax

Act, 1961, and to move the DRT if such an application was maintainable. The Supreme Court further observed that, as the period of limitation had already been crossed, the petitioner was allowed to file such applications within four weeks with 50% of the certificate amount including interest; and, in such a case, the competent authority would decide the same on merits without compelling them to deposit the total amount.

The recovery certificate is for a sum of Rs.6,44,18,997/-. It includes the principal amount of Rs.2,95,80,181/-, and interest from the date of the application till the date of the recovery certificate (i.e. 03.04.2000 to 01.10.2003) for a sum of Rs.3,45,72,816/-. It is not in dispute that the petitioner deposited 50% of the recovery certificate amount i.e., Rs.3.22 Crores. The Recovery Officer, by order in M.P.No.37 of 2014 dated 10.02.2015, rejected the petitioner's application as not maintainable on the ground that they had failed to deposit 50% of the certificate amount including interest.

Sri A.Sudarshan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would draw attention of this Court to the order of the Supreme Court in support of his submission that, while the petitioner had agreed to approach the Recovery Officer if they were allowed to deposit only the principal, the Supreme Court had directed them to pay 50% of the amount referred to in the recovery certificate; as against the principal of Rs.2.95 Crores, 50% of the amount in the recovery certificate came to Rs.3.22 Crores; the interpretation now placed, on the order of the Supreme Court, by the Recovery Officer is that the petitioner should pay 50% of the amount mentioned in the recovery certificate with interest till 27.08.2014 (the date of the order of the Supreme Court), which would be around Rs.32.00 Crores; the Supreme Court never intended that the petitioner should pay such a

huge amount, merely to avail their statutory remedies; and, in the light of the petitioner's earlier allegation that fraud had been played on them, the action of the respondents, in rejecting the petitioner's application, is illegal and the order, under challenge in this Writ Petition, has been passed only to help the ninth respondent.

Sri Prabhakar Peri, learned counsel for the respondent-bank, would emphasize the fact that the Supreme Court had directed the petitioner to pay not only 50% of the amount mentioned in the recovery certificate, but also interest thereupon which, according to him, could only mean 50% of the amount mentioned in the recovery certificate with bank interest till 27.08.2014; the Recovery Officer was justified in rejecting the application as the petitioner did not comply with the order of the Supreme Court; and, while the amounts deposited both by the ninth respondent and the petitioner are lying with the DRT, the respondent-bank has been unable to recover a single rupee towards the huge loan advanced by them, much less the entire principal with interest thereupon till date.

Sri L.Venkateswara Rao, learned counsel for the ninth respondent, while adopting the submissions made by Sri Prabhakar Peri, learned counsel for the respondent-bank, would also draw attention of this Court to the Contempt Application filed, by the ninth respondent herein, before the Supreme Court. Learned counsel would submit that, pursuant to the sale certificate issued in their favour, the property is in their possession. Sri A.Sudarshan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would however contend to the contrary.

It is not in dispute that the subject property is vacant land; and no construction has been raised thereupon till date. The dispute in this Writ Petition revolves around the scope of the words ***“50% of the certificate amount including interest”*** as observed in the order of the

Supreme Court dated 27.08.2014. While the petitioner contends that what they were directed to deposit is only 50% of the amount mentioned in the recovery certificate, which included the interest amount mentioned therein, learned counsel for the respondents would submit that the order of the Supreme Court required the petitioner not only to deposit 50% of the amount mentioned in the recovery certificate, but also bank interest till the date of the order of the Supreme Court.

It would be wholly inappropriate for this Court to examine the rival contentions in this regard, for the petitioner's remedy, if they are of the view that the order dated 27.08.2014 only required them to deposit

Rs.3.22 Crores, is to file an application before the Supreme Court seeking clarification of the order dated 27.08.2014. We see no reason, therefore, to entertain this Writ Petition.

Sri A.Sudarshan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would submit that, as the order of the Recovery Officer dated 10.02.2015 would now enable the ninth respondent to take possession of the property and raise construction thereupon, the petitioner's interest should be protected till they seek a clarification from the Supreme Court. Sri Prabhakar Peri, learned counsel for the respondent-bank, would, however, submit that the bank would be put to irreparable loss if further proceedings are stalled.

As the order of the Recovery Officer dated 10.02.2015, was passed less than a month ago, and as the validity of the order of rejection of the petitioner's application would depend upon the clarification which the petitioner may seek before the Supreme Court, we consider it appropriate to direct the parties to maintain *status quo* in all respects, including construction, alienation, creation of third party rights, changing the nature of the land etc., for a period of six

weeks from today. The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

06th March, 2015.

Note:

*Furnish C.C. of the order
by 10.03.2015.*

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