THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI M.SEETHARAMA MURTI

WRIT PETITION Nos.5286, 8054, 8071, 8121, 9578, 16576, 17792, 19631, 21024, 22591, 24288, 29574, 29884 29982 of 2014 and 1565 of 2015,

COMMON ORDER:

All these Writ Petitions, under Article 226 of the Constitution of India, are filed to declare (a) the provisions of Section 2 (1) (o) and Section 2 (1) (ha) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'); (b) the guidelines issued by the Reserve Bank of India, dated 02.07.2012, qua classification of account as Non-Performing Asset; (c) the action of respondent No.3 bank in declaring the account/assets of the petitioners as Non-Performing Asset taking into account the impugned RBI guidelines are not according to the letter and spirit of Section 2 (1) (o) of the SARFAESI Act and (d) the action of respondent No.3 bank in invocation of the measures taken under the provisions of the SARFAESI Act, as arbitrary and illegal and opposed to the public policy and accordingly, quash the same.

2. We have heard the learned counsel appearing for the parties in all the Writ Petitions.

3. Learned counsel, appearing for the parties in all the Writ Petitions, state that the issue with regard to the vires of Section 2 (1) (o) of the SARFAESI Act is squarely covered by a judgment of the Honourable Supreme Court in Writ Petition (Civil) No.901 of 2014 and batch **(Keshavlal Khemchand and Sons Pvt. Ltd. & others V. Union of India and others)**, wherein it is held thus (para 66):

"66. Therefore, in our opinion, the function of prescribing the norms for classifying a borrower's account as a NPA is not an essential legislative function. The laying down of such norms requires a constant and close monitoring of the financial system demanding considerable amount of expertise in the areas of public finance, banking etc., and the norms may require a periodic revision. All that activity involves too much of detail and promptitude of action. The crux of the impugned Act is the prescription that a SECURED CREDITOR could take steps contemplated under Section 13 (4) on the "default" (Section 2(1) (i) "default means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor)of the borrower. The expression "default" is clearly defined under the Act. Even if the Act were not to be on the statute book, under the existing law a CREDITOR could initiate legal action for the recovery of the amounts due from the borrower, the moment there is a breach of the terms of the contract under which the loan or advance is granted. The stipulation under the Act of classifying the account of the borrower as NPA as a condition precedent for enforcing the security interest is an additional obligation imposed by the Act on the CREDITOR. In our opinion, the borrower cannot be heard to complain that defining of the conditions subject to which the CREDITOR could classify the account as NPA, is part of the essential legislative function. If the Parliament did not choose to define the expression "NPA" at all, Court would be bound to interpret that expression as long as that expression occurs in Section 13 (2). In such a situation, Courts would have resorted to the principles of interpretation (i) as to how that expression is understood in the commercial world, and (ii) to the existing practice if any of either the particular CREDITOR or CREDITORS as a class generally. If the Parliament chose to define a particular expression by providing that the expression shall have the same meaning as is assigned to such an expression by a body which is an expert in the field covered by the statute and more familiar with the subject matter of the legislation, in our opinion, the same does not amount to any delegation of the legislative powers. Parliament is only stipulating that the expression "NPA" must be understood by all the CREDITORS in the same sense in which such expression is understood by the expert body i.e., the RBI or other REGULATORS which are in turn subject to the supervision of the RBI. Therefore, the submission that the amendment of the definition of the expression 'non-performing asset' under Section 2 (1) (o) is bad on account of excessive delegation of essential legislative function, in our view, is untenable and is required to be rejected."

Following the said judgment, all the Writ Petitions are liable to be dismissed.

4. Accordingly, all the Writ Petitions are dismissed. The other contentions raised by the learned counsel for the Writ Petitioners are left open. There shall be no order as to costs. Miscellaneous petitions, if any, pending in all these Writ Petitions shall stand closed.

K.C. BHANU,J

M.SEETHARAMA MURTI,J

FEBRUARY 25, 2015

Note:
Registry is directed to attach a copy of judgment, dated 28.01.2015 in Writ Petition (Civil) No.901 of 2014 & batch to this common order.

(B/o)

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THE HON'BLE SRI M.SEETHARAMA MURTI

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Date: 25.02.2015

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