

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.12383 of 2015

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ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

This writ petition is filed by the petitioners with the following prayer:

“..... Writ of *Mandamus*: (a) to declare that the powers granted to the Authorised Officer under the SARFAESI Act are opposed to public policy and thus unconstitutional, discriminatory and arbitrary besides to be rendered redundant due to passage of time; (b) to nullify the e-auction conducted in spite of assurance by the petitioners to pay the outstanding amount, and (c) to set aside the auction of the respondent Bank when the matter was under consideration by this Court and without waiting for the disposal of the writ petition the respondent Bank authorities proceeded with vengeance against principles of natural justice.”

2. Heard learned counsel for the petitioners and the learned Standing Counsel for respondents-Bank.

3. It is to be noted that earlier also when the petitioners have filed W.P.No.17792 of 2014 seeking to declare the very provisions under Section 2(1)(o) and 2(1)(h) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity “the SARFAESI Act”) and also the guidelines issued by the Reserve Bank of India for classification of account as non-performing asset and the action of respondent No.3-Bank in declaring the accounts/assets of the petitioners as non-performing assets as arbitrary and illegal, following the judgment of the Supreme Court in

KESHAVLAL KHEMCHAND AND SONS PVT. LTD. Vs. UNION OF INDIA AND OTHERS in W.P.(Civil).No.901 of 2014, the said writ petition was dismissed by common order dated 25.2.2015. When the auction notice to sell the secured assets of the petitioners after taking possession of the same is issued, the present writ petition is filed.

4. The only submission made by the learned counsel for petitioners is that when application of the petitioners for settling their accounts under One-time Settlement (OTS) Scheme is pending, it is not open to the respondent-Bank to proceed with the auction under the provisions of the SARFAESI Act.

5 . It is not in dispute that the outstanding amount due by the petitioners as on date is about Rs.1.20 Crores. The assets, which are notified, are given as security for the loan obtained by the petitioners. Therefore, on the only ground that their application for OTS Scheme is pending, the petitioners cannot question the proceedings initiated by the respondent-Bank in exercise of powers under the provisions of the SARFAESI Act. The benefit provided under OTS Scheme is not a matter of right and unless it is fit into the policy notified by the Respective Bank of India, the petitioners cannot claim such a benefit. If any application is made by the petitioners for OTS Scheme, it is open for the respondent-Bank to take steps in accordance with law. However, in view of the outstanding dues payable by the petitioners, we do not find any illegality in the proceedings initiated by the respondent-Bank. Further, the prayer in the writ petition is also vague and in view of the dismissal of earlier W.P.No.17792 of 2014 by order dated 25.2.2015, the petitioners are not entitled for the relief sought for in this writ petition.

6. For the aforesaid reasons, this writ petition is devoid of merits and is accordingly dismissed, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

08.06.2015.

Msr

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