THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.15992 of 2015

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

Heard Sri D.Raghavulu, learned counsel for the petitioner, and Sri Ambadipudi Satyanarayana, learned Standing Counsel appearing for the 1st respondent-City Union Bank.

In this writ petition, the petitioner seeks a direction by way of Mandamus to set aside the possession notice dated 20.05.2015 issued by respondent No.1 and consequently direct respondent No.1 to receive the overdue loan amount in three monthly instalments by regularizing the account and de-notifying the same from NPA.

The son of the petitioner is the original borrower and he availed cash credit facility from the 1st respondent Bank to a tune of Rs.20,00,000/- in the year 2010. The petitioner is the co-obligant for the loan obtained by his son. As the son of the petitioner committed default in paying the amounts to the 1st respondent Bank, he was issued with a demand notice and thereafter the possession notice, dated 20.05.2015, showing the description of the property mortgaged to the Bank.

In this writ petition, it is the case of the petitioner that there is no regular Presiding Officer for the Debts Recovery

Tribunal, Visakhapatnam (for short ‘the Tribunal’), and as such, he is unable to approach the Tribunal challenging the impugned action of the 1st respondent Bank. It is further submitted that due to heavy losses sustained in the business of Aquaculture, the account was notified as NPA and, therefore, he is entitled to pay the overdue loan amount in instalments by seeking regularization of the account.

On the other hand, learned counsel appearing for the 1st respondent Bank submitted that proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were initiated in the year 2013 and after issuing demand notice, possession notice was issued on 20.05.2015. It is also submitted that as much as the son of the petitioner has obtained cash credit facility, the petitioner is not entitled to seek regularization of the account for paying overdue amount in instalments.

Admittedly, there is no regular Presiding Officer for the Tribunal, but in-charge arrangements are already made. Therefore, there is no reason for the petitioner for not approaching the Tribunal. Further, as it is not in dispute that the son of the petitioner, who is the original borrower, committed default in paying the amount to a tune of Rs.23,80,948.50 ps and the petitioner is a co-obligant for the cash credit facility availed by his son, we do not find any illegality in the impugned possession notice dated 20.05.2015. However, since it is stated that no further sale notice is issued as on today, we deem it appropriate to dispose of the writ petition permitting the petitioner to pay the entire amount due to the 1st respondent Bank in two equal instalments within a period of two months from today, out of which the 1st instalment shall be paid within a period of four weeks from today and the 2nd instalment shall be paid within a period of two months from today. If the petitioner fails to pay the amount within the stipulated time, it is open to the 1st respondent Bank to take further steps for sale of the secured assets, in accordance with law.

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

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

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

16.06.2015
v v