

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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WRIT PETITION No.14375 OF 2015

ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This writ petition is filed challenging the docket order, dated 27.4.2015, in S.A.I.R.No.843 of 2014 on the file of the Debts Recovery Tribunal at Hyderabad (for short, "the Tribunal").

2. Petitioners herein filed the aforementioned Securitization Application before the Tribunal to declare the action of respondent Nos.1 to 3/Banks therein in approaching the Chief Metropolitan Magistrate, Nampally in CrI.M.P.No.3676 of 2014 and obtaining orders, dated 24.10.2014, for taking physical possession of Application "C" schedule properties through Advocate Commissioner as bad in law; declare the possession notice, dated 21.3.2014, in respect of Application Schedule "C" and "D" properties as null and void; declare that Application "C" schedule property is not a secured asset; set aside all the measures taken by the respondents therein in respect of Application Schedule "C" and "D" properties; direct the respondents therein to pay compensation for illegally invoking the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") against the Application Schedule properties and also to direct the respondents therein to pay the costs of the proceedings. The petitioners also filed I.A.No.4663 of 2014 seeking stay of all further proceedings pursuant to the possession notice, dated 21.3.2014, against the petition schedules "C" and "D" properties including taking physical possession of schedule "C" property with the aid of an Advocate Commissioner by way of execution of the warrant issued by the learned Chief Metropolitan Magistrate, Hyderabad in CrI.M.P.No.3676 of 2014.

3. The Tribunal, upon considering the material on record, passed the docket order on 27.4.2015 as under:

“.... Heard both the counsels. The issues/contentions raised by both the parties are the intriguing questions of law and facts, which have to be dealt with and decided after a thorough inquiry in the above SA. However, in view of the facts and circumstances of the case, the quantum of claim involved in the matter and also with a view to afford an opportunity to the applicants to show their bonafides, the applicants are hereby directed to deposit 20% of the amount claimed by the respondent Banks in the Possession Notice, dated 21.3.2014, out of which 10% of the amount is directed to be deposited within 3 weeks from today and the balance 10% within 3 weeks thereafter directly with the 1st respondent Bank. Accordingly, the respondent Banks are hereby directed to defer all further proceedings against the “C” and “D” schedule properties, in pursuance of the Possession Notice dt.21.3.2014 and the Warrant issued by the Ld.CMM, Hyderabad in Crl.M.P.No.3676/2014 until further orders of this Tribunal. In the event the applicants fail to deposit the amounts, as stated supra, the respondent Banks shall be at liberty to proceed further in accordance with law.”

Challenging the same, the applicants filed the present writ petition.

4. Heard.

5. Against any order passed under Section 17 of the SARFAESI Act, a statutory effective alternative remedy of filing an appeal before the Appellate Authority in terms of Section 18 of the SARFAESI Act is provided to the aggrieved party. The petitioners can avail the said remedy. No doubt, availing of statutory remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, but the petitioners must show that their case falls under any one of the three grounds viz., 1) violation of principles of natural justice, 2) proceedings were wholly without any jurisdiction and 3) violation of fundamental rights, as enumerated in a decision of the Apex Court reported in **WHIRLPOOL CORPORATION Vs. REGISTRAR OF TRADE MARKS, MUMBAI** , wherein it was held at para No.15 as under:

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

The case of the petitioners does not fall under anyone of the aforementioned three grounds. Therefore, the Writ Petition is liable to be dismissed. However, at request of the learned counsel for the petitioners, reasonable time can be granted to enable the petitioners to deposit the said amount.

6. Accordingly, the Writ Petition is dismissed giving liberty to the petitioners to file an appeal under Section 18 of the SARFAESI Act before the Appellate Authority. We grant another three (3) weeks' time from today to the petitioners to deposit 10% of the said amount and the remaining 10% of the said amount within three (3) weeks thereafter. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE M.S.K.JAISWAL

Date: 14.5.2015

AMD/PRV

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