THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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WRIT PETITION No.16915 OF 2014

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

Heard learned counsel appearing for the petitioner and also learned counsel appearing for respondent No.1 - Bank.

This Writ Petition is filed with the prayer, which reads as under:

> "It is therefore prayed that this Hon'ble Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the 1st Respondent in trying to get transferred in its name the 1900000 shares vide Share Certificate Nos.13577401 to 15477400 standing in the name of the Petitioner Company in the 3rd Respondent Company as illegal, arbitrary, malafide and without jurisdiction and pass such other order or orders as may deem fit and proper in the circumstances of the case."

The petitioner was sanctioned credit facility of Rs.8,00,00,000/- (Rupees eight crores) by respondent No.1 – Bank on 18.12.2009 under Cash Credit Facility on personal guarantee of its Directors and third parties apart from the mortgage of immovable properties and pledge of 19,00,000 equity shares of respondent No.3 – Company as security for due repayment of the loan amount. The petitioner has executed the pledge agreement and delivered original share certificates along with transfer deeds. As the petitioner committed default in repaying the loan amount, respondent No.1 – Bank has filed O.A.No.84 of 2013 on the file of Debts Recovery Tribunal, Hyderabad, for recovery of Rs.7,75,89,903.58 ps. and the Tribunal has issued Recovery Certificate, dated 05.03.2014, for recovery of Rs.9,27,55,871.58 ps.. When respondent No.1 is taking steps to enforce the aforesaid Recovery Certificate, this Writ Petition is filed mainly by placing reliance on the letter, dated 04.06.2014, addressed by respondent No.1 – Bank to respondent No.2 – Company, wherein respondent No.1 has requested to transfer 19,00,000 equity shares of respondent No.3 – Company held by the petitioner in its favour.

In this Writ Petition, mainly it is the case of petitioner that while it is open to respondent No.1 – Bank to take steps to enforce the Recovery Certificate, dated 05.03.2014, issued under Section 19 (22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act'), without following due process of law, as contemplated under the Act and the Rules made thereunder, it is not empowered to address respondent No.2 for transfer of the shares directly in its name.

On the other hand, it is submitted by the learned counsel for respondent No.1 – Bank that earlier petitioner filed O.S.No.2306 of 2012 on the file of XXI Junior Civil Judge, City Civil Court, Hyderabad, for the very same relief as prayed for in this Writ Petition and in the said Suit, he has also filed I.A.No.343 of 2012 for grant of interim order, but as the same was dismissed, he approached this Court by filing C.R.P.No.6033 of 2012 and this Court, by order, dated 14.12.2012, dismissed the revision petition and in spite of the same, on similar set of grounds, he again approached this Court by filing the present Writ Petition.

From a perusal of the affidavit filed in support of the petition, it is clear that the main case of the petitioner is that respondent No.1 cannot get the shares transferred without the consent of the petitioner and in case, if the petitioner does not accept the same, recourse would be by way of filing a civil suit or an application before the Debts

Recovery Tribunal for realisation of money by selling the shares, but it cannot directly request respondent No.2 to transfer the shares in its name, since the same cannot be a subject matter of SARFAESI proceedings. But, in this case, from a perusal of the Recovery Certificate, it is clear that respondent No.1 – Bank obtained recovery proceedings with regard to certain properties, which include the shares in question.

During the course of hearing, it is fairly submitted by the learned counsel for respondent No.1 that respondent No.1 – Bank intends to realise the money by taking further steps in accordance with law by enforcing the Recovery Certificate issued by the Debts Recovery Tribunal, but in view of the interim orders passed by this Court, they could not proceed further.

As it is not in dispute that respondent No.1 – Bank has already obtained Recovery Certificate under Section 19 (22) of the Act, and in view of the submission made by the learned counsel for respondent No.1 – Bank that the Bank will take steps for transfer of shares in accordance with the provisions of the Act and the Rules made thereunder by enforcing the Recovery Certificate obtained by them, it cannot be said that respondent No.1 – Bank is taking steps to transfer 19,00,000 shares of respondent No.3 held by the petitioner directly to it.

In view of the submission made by the learned counsel for respondent No.1, we deem it appropriate to dispose of the Writ Petition by permitting respondent No.1 – Bank to take further steps for recovery of the amount by enforcing the Recovery Certificate in accordance with the provisions of the Act and the Rules made thereunder.

Subject to the above, the Writ Petition is disposed of. Miscellaneous

Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH REDDY, J

A.SHANKAR NARAYANA, J

June 23, 2015

MD