*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION No.9797 OF 2015

% Dated 29-04-2015

Hari Shankar Bar & Restaurant rep., by its Proprietor K. Narahari Goud, S/o Hari Shankar Goud, aged about 38 years, Occ: Business, R/o Langarhouse, Hyderabad.

…. Petitioner

Vs.

$ Indian Bank, Kakatiya Nagar Branch, Door No.9-4-82/11, Kakatiya Nagar, Hyderabad, rep., by its Authorised Officer.

…. Respondent

! Counsel for the petitioner: Sri M.V. Suresh

^ Counsel for the respondent: Sri Ambadipudi Satyanarayana

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> HEAD NOTE:

? Citations:

1. (1998) 3 SCC 573
2. (1993) 4 SCC 317

3. (1996) 8 SCC 285
4. (2010) 11 SCC 557
5. (1977) 2 SCC 431
6. (1999) 1 SCC 271
7. (2003) 1 SCC 488
8. (2004) 7 SCC 166
9. (2010) 4 SCC 728

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner has invoked the jurisdiction of this Court, by way of this Writ Petition, seeking a mandamus to the respondent bank to permit him to pay the entire outstanding dues under their loan account, and for a consequential direction to the respondent-bank to drop all further proceedings under the SARFAESI Act (hereinafter called the "Act").

Facts, in brief, are that the petitioner borrowed Rs.66,00,000/- from the respondent-bank, under loan Account No.873377100, utilising the overdraft facility. He mortgaged his house, and open land admeasuring 2125 square yards, as security for the loan. On his committing default in payment of the loan instalments, the respondent-bank invoked the provisions of the Act treating the loan account as a non-performing asset. A notice, under Section 13(4) of the Act, was issued to the petitioner asking him to pay Rs.78,42,527/-, questioning which he preferred S.A. No.509 of 2014 before the Debt Recovery Tribunal, Hyderabad ("Tribunal" for short). By its order, in I.A. No.2813 of 2014 dated 22.07.2014, the Tribunal granted stay on condition that the petitioner deposited Rs.8,00,000/- within a period of four weeks, and a further sum of Rs.8,00,000/- within four weeks thereafter. The petitioner did not comply with the said order of the Tribunal. Subsequently the Tribunal, by its order dated 26.09.2014, directed the petitioner to pay Rs.20,00,000/- within fifteen days. As the petitioner failed to comply with this order also, the respondent-bank proceeded to take further action under the Act, and put the subject property to sale by way of auction.

The petitioner filed I.A. No.4975 of 2014 in S.A. No.509 of 2014, seeking stay of all further proceedings, claiming the right to take back possession of the mortgaged property by paying the outstanding amount due to the respondent, as a sale certificate had not yet been issued to the auction purchaser. The Tribunal dismissed the said I.A. by its order dated 12.12.2014, questioning which the petitioner filed W.P. No.39099 of 2014 before this Court. A Division bench of this Court, by its order in W.P. No.39099 of 2014 dated 19.12.2014, directed the petitioner to pay 50% of the outstanding amount within four weeks, and the remaining 50% within four weeks thereafter. The petitioner claims to have paid Rs.4,00,000/- by way of demand draft dated 28.01.2015, and a further sum of Rs.4,00,000/- by way of demand draft dated 25.03.2015. He admits his failure to deposit the remaining outstanding amount as directed by this Court in its order in W.P. No.39099 of 2014 dated 19.12.2014.

Consequent on the petitioner's failure to deposit the said amount, a commissioner was appointed by the Chief Metropolitan Magistrate, Nampally, Hyderabad to take possession of the mortgaged property. The commissioner is said to have issued a notice on 27.03.2015 informing the petitioner that possession would be taken within ten days from the date of issuance of the notice. The petitioner got a legal notice issued through his Advocate seeking information to comply with the order of the Division Bench in W.P. No.39099 of 2014. On the ground that the information sought for was not furnished, he has again invoked the jurisdiction of this Court by way of the present Writ Petition.

It is the petitioner's case that, despite his best efforts to comply with the directions of this Court in W.P. No.39099 of 2014 dated 19.12.2014, he had succeeded only to some extent, and had deposited Rs.8,00,000/-; he was still making his best efforts to arrange payment of the outstanding amount, and to take possession of the property mortgaged to the respondent bank; he was confident that he would be in a position to arrange the amount, required to discharge the outstanding amount due to the respondent-bank within a period of a month or so; and as he has the right to redeem the property, under Section 13(8) of the Act, this Court should issue a mandamus directing the respondent-bank to permit him to pay the outstanding amount due, and drop all further proceedings under the Act.

Sri M.V. Suresh, Learned Counsel for the petitioner, would submit that, while the petitioner had failed to comply with the orders of the Tribunal and the Division Bench of this Court, that would not disable him from redeeming his property in terms of Section 13(8) of the Act.

The order of the Division Bench, in W.P. No.39099 of 2014 dated 19.12.2014, records the repeated failure of the petitioner to comply with the orders passed by the Debt Recovery Tribunal; that, pursuant to the auction held on 08.12.2014, the successful bidder had deposited 25% of the bid amount on 08.12.2014, and the sale was also confirmed; and the Tribunal, by its order dated 12.12.2014, had dismissed I.A. No.4975 of 2014 stating that it was open to the petitioner to pay the entire amount before a sale certificate was issued and possession was delivered in favour of the auction purchaser. After taking note of the submission of the Learned Counsel for the petitioner that, if reasonable time was granted to him, the petitioner was ready to pay the outstanding amount due to the bank, the Division bench observed:-

> "……………..Considering the bona fide statement of the learned counsel for the petitioner and since the petitioner-firm has come forward with a proposal to discharge the entire loan amount, we grant reasonable time to it. In the first instance, the petitioner-firm shall pay 50% of the outstanding amount within four (4) weeks from the date of receipt of a copy of this order and remaining 50% amount within four (4) weeks thereafter. The respondent-bank shall not execute sale certificate in favour of the auction purchaser. If the petitioner-firm fails to fulfill any one of the conditions as mentioned above, the respondent-bank is at liberty to proceed further and can execute sale certificate in favour of the auction purchaser i.e., the highest bidder. Registry is directed not to entertain any application seeking 'extension of time' or 'for being mention' in this regard………….."

It is not in dispute that the aforesaid order of the Division bench has not been complied with, either within the time specified therein or even thereafter.

The submission of Sri M.V. Suresh, Learned Counsel for the petitioner, is that the petitioner has the right to redeem the property under Section 13(8) of the Act. Section 13(8) of the Act enables the person, who has mortgaged the property, to tender to the secured creditor payment, towards the entire debt due together with all costs, charges and expenses, at any time before the date fixed for sale or transfer. On such amount being tendered, the secured creditor is disabled from selling or transferring the secured asset, and is required not to take any further steps for transfer or the sale of the secured asset. It is with a view to enable the petitioner to redeem his property, in terms of Section 13(8) of the Act, did the Division Bench, by its order in W.P. No.39099 of 2014 dated 19.12.2014, grant him time even after noticing that the subject property had been put to auction on 08.12.2014, the successful bidder had deposited 25% of the bid amount on the same day, and the sale was confirmed.

While the borrower has the right, under Section 13(8) of the Act, to redeem the mortgaged property at any time before the date fixed for sale or transfer, what the petitioner, in effect, seeks in this Writ Petition is for a mandamus from this Court directing the respondent-bank to desist from issuing a sale certificate to the auction purchaser till the petitioner repays the loan amount at his convenience. The order of the Division bench, in W.P. No.39099 of 2014 dated 19.12.2014, stipulated a time frame within which the entire loan amount due was required to be paid to the respondent-bank. The petitioner has now filed the present Writ Petition, seeking an identical relief, on the ground that the Division bench had specifically directed that no application for extension of time should be entertained. Granting the petitioner, the relief sought for in this Writ Petition, would require this Court to sit in judgment over the orders passed by a coordinate bench. In the light of the aforesaid order of the Division bench, it would be wholly inappropriate for a coordinate bench to entertain a fresh Writ Petition, or grant further time beyond what was granted by the Division Bench in its order in W.P. No.39099 of 20154 dated 19.12.2014. While it is always open to the petitioner to redeem his property tendering the entire amount due with interest and costs to the secured creditor (i.e., the respondent-bank), at any time before a sale certificate is issued by the respondent-bank in favour of the auction purchaser, he cannot seek a mandamus from this Court directing the respondent-bank not to issue a sale certificate till it is convenient for him to repay the amount due, more so when an earlier request in this regard has been rejected by a co-ordinate bench of this Court in W.P. No.39099 of 2014.

Accepting the submission of Sri M.V. Suresh, Learned Counsel for the petitioner, that the petitioner can file the present Writ Petition, seeking time for repayment, would mean that the petitioner can file one Writ Petition after another, seeking further time to enable him to repay the debt due to the respondent-bank at his convenience. Filing one Writ Petition after another, seeking grant of time to repay the debt due to the respondent-bank, is an abuse of process of Court. The term “abuse of the process of the court” connotes that the process of the court must be used bonafide and properly, and must not be abused. The court will prevent improper use of its machinery and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances, and for this purpose considerations of public policy and the interests of justice may be very material. A proceeding being filed for a collateral purpose would also, in a given set of facts, amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the court process. (**K.K. Modi v. K.N. Modi**).

It is the duty of the High Court to ensure that its judicial process is not abused and its order does not become an instrument or aid to overreach the adversary. (**M.V. Venkataramana Bhat v. Returning Officer and Tahsildar**). Once the Court is satisfied that the petitioner has abused the process of law, and has misused the legal system, it is entitled to act in such cases to prevent such abuse and misuse. (**Municipal Corpn. of Delhi v. Kamla Devi**). On the Court coming to such a conclusion, it would be justified in not proceeding further, and in refusing relief to the party. (**Manohar Lal v. Ugrasen**; **State of Haryana v. Karnal Distillery Co. Ltd. Sabia Khan v. State of U.P.**; **Abdul Rahman v. Prasony Bai**; **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar** and **Oswal Fats & Oils Ltd. v. Commr. (Admn.)**).

As this Writ Petition is an abuse of process of Court, it must be, and is accordingly, dismissed with exemplary costs of Rs.10,000/- which the petitioner shall pay the respondent bank within four weeks from today. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

Date: 29.04.2015.

MRKR/CS