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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 07.09.2015
Judgment Pronounced on: 14.09.2015

\+ LPA 582/2015

F S SAGGU ..... Appellant

Through: Mr.Mathews J. Nedumpaba with Mr.Rabin Majumder & Mr.A.C.Philip, Advocates.

Versus

THE UNION OF INDIA & ORS ..... Respondent

Through: Mr.Vikram Jetley with Ms.Pallavi Shali, Advocate for UOI/R-1.
Mr.K.S.Parihar and Mr.H.S.Parihar, Advocates for R-2/RBI.
Mr.Rajiv Kapur with Mr. Karan Kakkar, Advocates for RBI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

C.M.Appl.17550/2015 (delay)

For the reasons stated in the application, the delay of 83 days in filing the appeal is condoned.

The application is disposed of.

LPA No.582/2015

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 05.05.2015 passed in W.P.(C) 4296/2015.

2. The writ petition was filed by the appellant seeking the following reliefs:-

> "a) declare that the Guidelines bearing No.RBI/2014-15/74 DBOD No.BP.BC.9/21.04.048/2014-15 dated 01.07.2014 (Annexure-P1), purportedly issued by the Reserve Bank of India, by which the Petitioner's Firm account has been classified as NPA or likely to be classified so, and there upon the Respondent-Bank could invoke Sections 6, 13 or 14 of the SARFAESI Act, 2002 and thereby assign, alienate, transfer or take possession of the properties of the Petitioner/his Firm, which the Respondent Bank falsely claims to be a secured asset at its hands, is ultra vires, unconstitutional, and void, so also that any proceedings or action in terms of Section 6, 13 or 14 of the said Act, and to grant such other further consequential reliefs, remedies and in particular, writ of injunction and writ of prohibition restraining and prohibiting Respondent-Bank from invoking Sections 6, 13 & 14 of the said Act, as this Hon'ble Court may find appropriate; and
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> b) pass such other order or orders, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. The limited facts that are placed on record to warrant the filing of the writ petition are that the appellant is stated to be a retired Air Force Officer. It appears that the appellant/his son and their immediate relatives/friends arranged at their disposal Rs.221 crores for setting up of a 5-Star Luxury Hotel at Chandigarh. The petition is thereafter makes allegations against the bankers of the appellant i.e. State Bank of India, namely, respondent No.3 including its various officers, namely, respondents No. 4 to 9. The learned Single Judge in the impugned order notes that asset of the petitioner has

already been declared as a Non-performing Asset (hereinafter referred to as 'NPA').

4. The Guidelines/Circular dated 01.07.2014 issued by RBI which is challenged by the appellant is titled as "Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning-pertaining to Advances". The circular deals with various aspects including the guidelines for sale of financial asset to securitization/reconstruction company.

5. The bone of contention of the appeal is the definition of NPA. NPA is defined under Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the SARFAESI Act). Section 2(o) of the SARFAESI Act is as follows:-

> "2. Definitions (1) In this Act, unless the context otherwise requires,--
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> xxx
>
> (o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,-
>
>> (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;
>>
>> (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;"

6. The Act provides for the appropriate authority to provide for a criteria for declaration of an asset as an NPA, which criteria is to be issued through the medium of directions/guidelines.

7. The learned Single Judge dismissed the writ petition holding that the challenge to SARFAESI Act was examined by the Supreme Court in its judgment in the case of ***Mardia Chemicals Ltd. vs. Union of India, (2004) 4 SCC 311***. The source of power of issuing regulations was held to be under Section 35A of the Banking Regulation Act, 1949 under which RBI is empowered to issue directions from time to time. Accordingly, the writ petition was dismissed.

8. We have heard the learned counsel for the parties and gone through the record.

9. Learned counsel appearing for the petitioner submitted that the legal frame work to declare a asset as NPA is illegal and unconstitutional. It is elaborated that the delegation of powers to an institute like RBI to determine whether an asset is an NPA or not, is patently illegal and unconstitutional on four different grounds. It is firstly submitted that the SARFAESI Act is a draconian law where a party can lose his valuable property. The notification which is issued by RBI for classification of a property as NPA is a mere administrative act. It is urged that definition of NPA is unconstitutional as a person cannot be deprived of his property in this manner by an administrative act. It is secondly urged that Section 2(o) of the SARFAESI Act suffers from delegation of the legislative functions. The Parliament cannot delegate its legislative functions like this to statutory bodies like RBI. It is thirdly urged that there is nothing in the regulation issued by RBI to

show that the Board of Governors of RBI have made the said regulations. In the absence of any stipulation it cannot be said to be a circular of RBI. It is lastly submitted that the regulation also does not stipulate the source of power under which the impugned circular has been issued.

10. Learned counsel appearing for respondent No.2 has pointed out that the Supreme Court has dealt with all these submissions in its latest judgment in the case of ***Keshavlal Khemchand and Sons Pvt. Ltd. & Ors. v. Union of India & Ors., AIR 2015 SC 1168***.

11. A perusal of the judgment of the Supreme Court in the case of ***Keshavlal Khemchand and Sons Pvt. Ltd. & Ors. v. Union of India & Ors. (supra)*** would show that all the contentions and submissions raised by the appellant have been fully dealt with and rejected by the Supreme Court. The Supreme Court in para 66 noted as follows:-

> "66. Therefore, in our opinion, the function of prescribing the norms for classifying a borrower's account as a NPA is not an essential legislative function. The laying down of such norms requires a constant and close monitoring of the financial system demanding considerable amount of expertise in the areas of public finance, banking etc., and the norms may require a periodic revision. All that activity involves too much of detail and promptitude of action. The crux of the impugned Act is the prescription that a SECURED CREDITOR could take steps contemplated Under Section 13(4) on the "default" of the borrower. The expression "default" is clearly defined under the Act. Even if the Act were not to be on the statute book, under the existing law a CREDITOR could initiate legal action for the recovery of the amounts due from the borrower, the moment there is a breach of the terms of the contract under which the loan or advance is granted. The stipulation under the Act of classifying the account of the borrower as NPA as a condition

precedent for enforcing the security interest is an additional obligation imposed by the Act on the CREDITOR. In our opinion, the borrower cannot be heard to complain that defining of the conditions subject to which the CREDITOR could classify the account as NPA, is part of the essential legislative function. If the Parliament did not choose to define the expression "NPA" at all, Court would be bound to interpret that expression as long as that expression occurs in Section 13(2). In such a situation, Courts would have resorted to the principles of interpretation (i) as to how that expression is understood in the commercial world, and (ii) to the existing practice if any of either the particular CREDITOR or CREDITORS as a class generally. If the Parliament chose to define a particular expression by providing that the expression shall have the same meaning as is assigned to such an expression by a body which is an expert in the field covered by the statute and more familiar with the subject matter of the legislation, in our opinion, the same does not amount to any delegation of the legislative powers. Parliament is only stipulating that the expression "NPA" must be understood by all the CREDITORS in the same sense in which such expression is understood by the expert body i.e., the RBI or other REGULATORS which are in turn subject to the supervision of the RBI. Therefore, the submission that the amendment of the definition of the expression 'non-performing asset' Under Section2(1)(o) is bad on account of excessive delegation of essential legislative function, in our view, is untenable and is required to be rejected."

12. The Supreme Court held that the function of prescribing the norms for classifying a borrower's account as a NPA is not an essential legislative function. Such an activity involves too much of details and promptitude of action and is best left to the discretion of the authorities.

The Supreme Court in the said case also relied upon its earlier judgment in the case of ***ICICI Bank Limited** v. **Official Liquidator of APS***

Star Industries Limited and Ors., (2010) 10 SCC 1 to hold that Reserve Bank of India had the authority by virtue of Section 21 and 35A of the Banking Regulation Act to issue guidelines and directions from time to time to the banks and various financial institutions. This was held in para 51 relevant portion of which reads as follows:-

> "51. ….. In lieu of the importance and complexities, the Reserve Bank, the prime regulator of the Indian economy and banking system, has been issuing guidelines and directions from time to time not only to the banks but to various other financial institutions which are amenable to its jurisdiction. Such instructions given from time to time are consolidated annually and published in the form of "Master Circulars". One of such circular dated 30.08.2001 was taken note of by this Court in Mardia Chemicals, AIR 2004 SC 2371 Incidentally, the authority of the Reserve Bank to issue such instructions was considered by this Court in ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited and Ors., (2010) 10 SCC 1: (AIR 2011 SC 1521), and this Court held that the Reserve Bank did have such authority by virtue of Sections 21 and 35-A of the Banking Regulation Act, 1949."

13. The above judgment takes care of all the submissions which were raised and addressed by the appellant.

14. There is no merit in the present appeal. We see no reason to interfere with the impugned order of the learned Single Judge.

15. The appeal is dismissed.

JAYANT NATH, J

CHIEF JUSTICE

SEPTEMBER 14, 2015/*rb*