HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5873 OF 2016

ORDER: (Per NRR,J)

The two petitioners herein have challenged the action of the respondent-Panjab and Sind bank in taking symbolic possession of their house property bearing No.8-9-40/47 in plot No.47 admeasuring 347 sq.yards in Sy.No.91 to 96, Block No.9, Ward No.8, Dhatu Nagar of Karmanghat, Saroornagar Mandal, Ranga Reddy District, as bad in law.

2. It appears the petitioners herein have a flat. As a security for a financial assistance availed by a firm called S.V. Constructions, the proprietor of which firm is their son, the petitioners have created a mortgage over a residential property described supra. Unfortunately the debt has not been serviced properly by not paying up the monthly installments. As a consequence, the debt account has been declared as a non-performing asset by the respondent bank. A notice was drawn under Sub Section 2 of Section 13 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), on 03.11.2015 by the respondent bank demanding the petitioners to liquidate the outstanding liability of Rs.87,21,182.70(Rupees eighty seven lakhs, twenty one thousand one hundred and eighty two and seventy paise) within two months period. After expiry of the two months period, finding that the petitioners have not paid the outstanding liability, the respondent bank has proceeded further and taken the follow up action under Sub Section 4 of Section 13 of the SARFAESI Act and has taken symbolic possession of the secured asset. That action of the bank triggered the present action. Sri Sarvotham Reddy, the learned counsel for the petitioners would urge that if the petitioners are granted some little time, they would liquidate the entire liability.

3. With a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith, the Parliament has enacted the Act. Various expressions found mentioned in the enactment are defined under Section 2(1) of the SARFAESI Act. The expression 'Bank' has been defined under Section 2(1)(c) of the SARFAESI Act in the following terms:

> *"Bank" means--*
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> *(i) a banking company; or*
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> *(ii) a corresponding new bank; or*
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> *(iii) the State Bank of India; or*
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> *(iv) a subsidiary bank; or*
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> *(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"*

4. Similarly the expression 'Borrower' has been assigned a very exhaustive definition under Section 2(1)(f) of the SARFAESI Act which runs as under:

> *"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;"*

5. The expression 'Financial Asset' has been defined in Section 2(1)(l) of the SARFAESI Act, as under:

> *"Financial Asset" means debt or receivables and includes--*
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> *(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or*
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> *(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or*
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> *(iii) a mortgage, charge, hypothecation or pledge of movable property; or*

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(vi) any financial assistance;

6. Therefore, even the petitioners as guarantors answer the description of the borrower in view of the expansive definition accorded to the expression under the present act. The petitioners herein have failed to liquidate the entire liability in spite of receiving the notice under Sub Section 2 of Section 13 of the SARFAESI Act. Consequently, after expiry of the 60 days period, the follow up action of taking possession of the secured asset has been resorted to by the respondent bank, as the same is in accord with Section 13 of the Act. We cannot find fault with the above action of the respondent bank.

7. At this stage, Sri Sarvotham Reddy, learned counsel for the petitioners, would submit that if the petitioners are granted time upto 30.03.2016, they will liquidate at least 50% of the outstanding debt due to the respondent bank and the entire balance amount together with the incidental charges incurred by the bank for invoking the securitization measures would be cleared by 31.05.2016.

8. Though the SARFAESI Act is a complete code in itself and does not leave much of a discretion for the Court's interference but nonetheless when we consider that the ends of justice would be better served by providing time to the petitioners to liquidate the entire liability. By accepting the proposals of the Sri Sarvotham Reddy, we direct the respondent bank not to confirm the sale in favour of the best bidder(s) for the secured asset namely house property bearing No. 8-9-40/47 in plot No.47 admeasuring 347 sq.yards in Sy.No.91 to 96, Block No.9, Ward No.8, Dhatu Nagar of Karmanghat, Saroornagar Mandal, Ranga Reddy District, subject to the following conditions:-

1. The petitioner shall deposit not less than 50% of the outstanding liability in one or more number of installments, on or before 30.03.2016,

2. The balance amount outstanding together with incidental expenses which the respondent bank would have incurred for undertaking the securitization measures will have to be cleared by 31.05.2016,

3. if for any reason the petitioners fail to live up to the promise made by them to clear the 1^{st} of the two installments by 30.03.2016 and/or the second installment by 31.05.2016, the respondent bank is at liberty to proceed further in the matter without any reference to this Court and confirm the sale in favour of the best bidder(s) and transfer possession of the secured asset, after collecting the balance bid amount.

9. In the result, the Writ Petition is disposed of. No costs.

10. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 25.02.2016.

VVR