

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No. 28983 OF 2015

ORDER : *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Entertaining this Writ Petition, an interlocutory order was passed on 08.09.2015 by a Division Bench of this Court directing Respondents 2 and 3 not to issue the sale certificate pursuant to the auction held on 07.09.2015, subject to the condition of the petitioners depositing an amount of Rs. 19 lacs within a period of two weeks from that day. A caveat was also entered thereafter by this Court by making it clear that if the amount was not deposited within the prescribed time, it is open to the respondent bank to take further steps in accordance with law.

Once again, the learned Standing Counsel for State Bank of India Sri Deepak Bhattacharjee would reiterate the fact that the petitioners have failed to comply with the discretionary order passed by this Court on 08.09.2015 and they have not deposited the money directed by this Court to be so deposited.

It is represented that the 1st petitioner herein has approached State Bank of India, Narsapur Branch and availed certain financial assistance from the said bank for carrying on the aquaculture activity. It is averred in paragraph 4 of the affidavit filed in support of this Writ Petition that due to various adverse seasonal conditions, the petitioners have suffered financial loss and hence, could not repay the loan amount. It is further stated that on 28.08.2015, a notice was published in newspapers proposing to sell away the secured asset. It is asserted that the 1st petitioner has approached the 3rd respondent bank with a sum of Rs. 2 lacs on 05.09.2015 offering to liquidate the

entire liability, but the 3rd respondent has not accepted the amount to be deposited into the loan account and hence, the petitioners could not deposit the same.

Hence, the question that is to be examined is whether the action initiated by Respondents 2 and 3, in terms of and in accordance with Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), is, in any manner, illegal.

The SARFAESI Act has been ushered in by the Parliament for the purpose of regulating the securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith.

The expression '*bank*' has been defined in Section 2(1)(c) of the Act, in the following terms:

"bank" means -

- (i) a banking company; or
- (ii) a corresponding new bank; or
- (iii) the State Bank of India; or
- (iv) a subsidiary bank; or {(iva) a multi-State co-operative bank; or}
- (v) such other bank which the Central Government may, by notification, specify for the purposes of this Act."

Hence, Respondents 2 and 3, being the Authorized Officer and the Chief Manager of one of the branches of State Bank of India, squarely answer the said definition. The petitioners also answer the definition of '*borrower*' as defined in Section 2(1)(f), in the following terms:

"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 include 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."

There is no difficulty in concluding that the financial assistance availed by the petitioners from State Bank of India, Narsapur Branch also answers the description of '*debt*' as defined in Section 2(1)(ha). Since the petitioners, on their own showing, have committed default in repayment of the loan amount, the expression '*default*,' as defined in Section 2(1)(j), gets attracted squarely. The expression '*financial asset*' has been defined in Section 2(1)(l) of the Act, in the following manner:

"*financial asset*" means debt or receivables and includes –

- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
- (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
- (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."

Hence, a mortgage or a charge or hypothecation or pledge of movable property created in favour of the bank answer the description of '*financial asset*'. Since this is an enactment for securitization of financial interests of the secured creditors, the expression '*non-performing asset*' has been defined in Section 2(1)(o), which is as well attracted to the facts and circumstances of the present case. The expression '*property*' has been defined in inclusive terms in Section 2(1)(t) in the following manner:

"*property*" means –

- (i) immovable property;
- (ii) movable property;
- (iii) any debt or any right to receive payment of money, whether secured or unsecured;
- (iv) receivables, whether existing or future;

- (v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature.”

Section 13 of this Act provided for measures for enforcing the security interest, which makes it very clear that any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions contained in this enactment. Thus, the usual process of approaching the civil Court of competent jurisdiction has been obviated and measures under Section 13 of the SARFAESI Act can be initiated for recovery of the debt due to a secured creditor. Under sub-section (2), a notice of demand for payment of the outstanding liability is to be drawn and served on the borrower together with the guarantors and a minimum time span of 60 days has to be provided for liquidating the liability. Any failure either to liquidate the liability or to make the banker/secured creditor reverse the transaction by making the loan account re-classified and brought out of the fold of the non-performing asset, entitles the secured creditor to take any of the measures provided for under sub-section (4) of Section 13 of the Act. Clause (a) thereof enables the secured creditor to take possession of the secured asset of the borrower, including the right to transfer by way of lease, assignment or sale for realizing the secured asset. Therefore, under sub-section (4), a wide range of powers have been conferred upon the secured creditor to take any one such measure provided and contemplated there for.

Section 14 is an enabling provision, which obligates the Chief Metropolitan Magistrate or the District Magistrate, in whose jurisdiction the secured asset is lying, to extend the necessary help in the matter of taking possession of the secured asset, at the first instance, and then,

transfer the same in favour of the secured creditor later on. In view of the legal regime prevailing, action of Respondents 2 and 3 in undertaking securitization of the debt, which is overdue and declared as a '*non-performing asset*', is in accord with the provisions referred to supra and contained in Section 13 of the SARFAESI Act. In that view of the matter, the prayer as sought for in this Writ Petition is incapable of being granted by this Court.

However, with a view to provide one last opportunity to the petitioners to redeem their immovable property and prevent it from being sold in public auction, which may not, at all times, fetch the realistic and prevailing market value but less than the same, we direct Respondents 2 and 3 to receive the entire liability, if tendered to be deposited by the petitioners on or before 30.03.2016. In case the petitioners pay up the entire amount due and thus, liquidate the outstanding liability, the respondents may not confirm the sale and on the other hand, if the petitioners fail to deposit the said money latest by 30.03.2016, it shall be open to Respondents 2 and 3 to confirm the sale in favour of the best bidder on or immediately thereafter on 04.04.2016 by accepting the bid amount completely, execute a sale certificate and also register the same duly transferring right, title, interest and possession over the secured asset in favour of the auction purchaser, without any further reference to this Court.

The Writ Petition accordingly stands disposed of. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

16th March 2016

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