HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
And
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5675 of 2016

ORDER : (Per Hon'ble Justice Nooty Ramamohana Rao)

This writ petition is preferred mounting a challenge to the notice dated 28th January 2016, for taking over possession of the secured asset by the 1st respondent-Bank.

2. The case of the petitioner herein is that the 3rd respondent herein is a Partnership Firm, the 7th respondent, who is the son of the petitioner herein, has joined the said partnership Firm and started carrying on business. Respondents 4, 5 and 6 are stated to be the other partners of the said Firm. Since the Firm sought for financial assistance from the 1st respondent herein, State Bank of India, the said loan was sought to be secured. Hence, a Letter of Arrangement dated 07.09.2013, has been worked out between the Bank on one hand and the 3rd respondent-Partnership Firm on the other. As a part of this security arrangement, a milk products factory standing on land of extent of Ac.2-12 Cents, situated at Sy.No.161/1, Chabole road, Rythunagar Grampanchayat, Nunepalli, Nandyal Mandal,Kurnool District, was offered as primary security. As a collateral security, a house property comprising ground plus two floors located at

Sy.No.419/1 bearing Door No.28-848-C, Street No.28, NGO Colony Road, Nandyal, admeasuring 121.38 square yards, belonging to the petitioner herein, was offered as a collateral security. A mortgage is also created by depositing the title deed thereof with the 1st respondent-Bank. The debt availed has not been serviced properly and consequently, default of repayment had occurred. The 1st respondent-Bank has declared the loan account as a Non-Performing Asset, and hence, adopted the Securitisation measures provided for under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). As a part of that measure, the present impugned notice is issued. Challenging the said action, the present writ petition is filed.

3. Heard Sri P.Durga Prasad, learned counsel for the writ petitioner.

4. The facts, which are not in controversy, are that the 3rd respondent availed certain financial assistance from the 1st respondent-Bank, but failed to repay the said amount promptly, rendering the loan account as a Non-Performing Asset and as a security to the financial assistance so availed, the petitioner herein has offered her residential property as a collateral security by creating a mortgage thereon. Now, the whole question is whether

the Bank is justified in attempting to liquidate both the primary security and the secondary security at one go, irrespective of the fact that the primary security itself, if sold, would have fetched enough money to liquidate the liability entirely.

5. Parliament enacted the SARFAESI Act with a view to regulate securitisation and reconstruction of financial assets and for enforcement of security interests and for matters connected therewith. Various expressions used in the Enactment are defined in Section 2(1). In Clause (c), "Bank" has been defined 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
> (v) such other bank which the Central Government may,
> by notification, specify for the purposes of this Act"

Thus, State Bank of India, the 1st respondent herein, squarely answers the expression of the "Bank" found mentioned in the Act. The definition of the expression "Borrower" is found in Clause (f) of Section 2(1), 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 bank any or financial institution and includes a person who becomes borrower of a securitisation 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."

By the extensive definition assigned to the expression "borrower", even a guarantor answers the expression "borrower". The expression "default" is defined in Clause (j) of Section 2(1) as under :

> ""default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor."

From the above definition, when once the account of the borrower is classified as a Non-Performing Asset in the Books of Account of the secured creditor, it renders such an account as a default committed account. The expression "Secured Asset" has been defined in Clause (zc) of Section 2(1), as meaning the property on which the security interest is created. Thus, the residential plot belonged to the petitioner, which has been offered as a collateral security and also over which a mortgage is created, answers the description of a secured asset. Similarly, the expression "security interest" is defined in

Clause (zf) of Section 2(1) in the following words :

> “"security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31.”

6. Section 13 of the SARFAESI Act provided for measures for enforcement of the security interest. Under Sub-Section (2) thereof, where any borrower who is under a liability to a secured creditor makes any default in repayment of secured debt or any instalment thereof, his account in respect of such debt, if is classified by the secured creditor as a Non-Performing Asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of the notice. In the instant case, a notice under Section 13(2) has been drawn and was issued to the principal borrower and also the writ petitioner herein on 02.11.2015, but however, such notices have been returned unclaimed, therefore, the 1st respondent-Bank has adopted the method of substituted service by publishing it in leading newspapers having circulation in the locality in question on 21.11.2015. It was demanded from the borrowers to liquidate the liability of Rs.1,88,70,128/- as on 02.11.2015. The said notice has not been acted upon and the liability was not liquidated. Hence, after expiry of

60 days, the follow-up action provided for under Section 13(4) has been initiated by the 1st respondent-Bank by taking possession of the secured asset comprising of two items, of which, the 2nd item is stated to be owned and belonging to the petitioner herein. This action of the 1st respondent-Bank cannot be faulted for the reason that the Bank is authorized and entitled to take such measures as part of securitisation of a Non-Performing Asset. The action of the Bank being in conformity with the provisions contained under Section 13 of the Act, no exception can be drawn thereto.

7. However, one submission Sri P.Durga Prasad makes requires to be considered i.e. the present market value of the primary security which is described as Item No.1 in the Notification issued under Section 13(4) by the 1st respondent-Bank is worth more than Three Crores, therefore, by putting the said primary security alone to sale by auction, entire outstanding liability of more than Rs.1.88 Crores can be liquidated, and hence, no necessity for putting the Item No.2 of the notice issued under Section 13(4) to sale would arise.

8. It will be difficult at this stage for us to speculate that there would be adequate number of buyers available readily for buying Item No.1 of the notice drawn under Section 13(4). Equally, we may not be able to speculate as to whether the bids will be fetching any offer beyond

Rs.1.88 Crores as well. In the event if any bidder comes forward and offers a sum of more than Rs.1.88 Crores for purchasing Item No.1 and accordingly deposits the bid amount, we are confident that the 1st respondent-Bank would be in no urgency whatsoever to liquidate Item No.2 of the properties sought to be sold-out now. Any such attempt would be a redundant exercise. But however, since the 1st respondent-Bank perhaps could not be in a position to ascertain with any sense of reasonable assuredness that for the 1st Item itself bids would be received for an amount which is far higher than the outstanding liability, we propose to regulate the exercise liable to be indulged in by the Bank in the following manner :

9. It shall be open to the 1st respondent-Bank to put to sale by way of public auction/e-auction both the items of the secured interests, but however, if bids are already received in so far as item no.1 is concerned for a value which is higher than the outstanding liability of the 3rd respondent-borrower, the further necessary action of opening the bids received for the 2nd item of the secured asset, namely, residential plot belonged to the petitioner, may not be processed. Only in the event when bids are not received which can liquidate completely the liability of the borrower or when any difficulty arises for realizing the

bid amount, then perhaps, the 1st respondent-Bank can process the bids received for the 2nd Item of the secured asset. The 1st respondent-Bank may open the bids for both the Items and declare as to who is the best bidder amongst those who have offered their bids, but however, if the offer for the 1st Item of the secured asset crosses the amount of outstanding liability, then the 1st respondent-Bank may not issue any letter of confirmation in favour of the best bidder for 2nd Item for depositing the balance money. Let the exercise be carried out in that manner.

10. With these, the writ petition stands disposed of. No costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

25th February 2016
ajr