

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.35342 of 2016

Order: (per V.Ramasubramanian, J.)

Challenging an order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), one of the Directors of the Company who was also a guarantor came up with the above writ petition.

2. The main contention of the writ petitioner was that the principal borrower agreed to pay money but did not pay and that if sufficient time is granted, the writ petitioner himself would discharge the liability.

3. Heard Mr. L.Ravichander, learned Senior Counsel appearing for the petitioner and Mr. E.Madan Mohan Rao, learned counsel for the respondent-Bank.

4. It appears that the borrower company came up with a writ petition in W.P.No.16405 of 2016 and undertook to clear the dues in 3 instalments on or before 31-8-2016. But the borrower company could make payment of only Rs.5 lakhs pursuant to the said order. Therefore, the Bank initiated action against the guarantor's property.

5. In order to demonstrate his *bona fides*, the petitioner has now deposited Rs.25 lakhs, in two instalments, one on 10-11-2016 and another on 11-11-2016. He has also filed an Affidavit, paragraphs 5 and 6 of which read as follows:

“5. I submit that after disposal of the Writ Petition, the principal borrower company informed that it has deposited Rs.5,00,000.00 and subsequently a further sum of Rs.25,00,000.00 deposited into the loan account in terms of the undertaking before this Hon’ble court totaling to Rs.30,00,000.00. The balance payable would be, Rs.1,09,82,881.17 in terms of the Bank letter dated 06.05.2016.

6. I submit that part of the property was let out in favour of a tenant and residential portion is in our personal occupation. However, the respondent Bank during pendency of the Writ Petition, taken over possession of the property in part while leaving Residential portion in our possession. In view of the same, the entire belongings of the tenant are also lying in the property. Moreover we are deriving certain rents from the property. I undertake to clear the balance amount of Rs.1,09,82,881.17 in six monthly equal instalment. It is also relevant to state that the proceedings are only at Section 13(4) of SARFAESI Act and as such it is just and necessary to direct the respondent Bank to redeliver the property to the tenant, otherwise I will be put to irreparable loss and hardship. Hence, this affidavit.”

6. The main objection of Mr. E.Madan Mohan Rao, learned counsel for the Bank, is that despite such an indulgence having been shown to the borrower, there was no progress and that the petitioner should actually go before the Tribunal.

7. The objections of the learned counsel for the Bank are certainly well founded. But the fact remains that Rs.30 lakhs has now been paid, Rs.5 lakhs by the borrower and Rs.25 lakhs by the writ petitioner, during the pendency of this writ petition. The petitioner has also undertaken to

make payment of the balance amount within a period of 6 months in equal monthly instalments.

8. Considering the above, the writ petition is disposed of to the following effect:

(1) The petitioners shall pay on or before the 07th day of every succeeding English Calendar month, commencing from December, 2016 onwards, a sum of Rs.20,00,000/- (Rupees twenty lakhs only).

(2) Once the 1st instalment of Rs.20 lakhs is paid on or before 07th December, 2016 and the 2nd instalment of Rs.20 lakhs is paid on or before 07-01-2017, the Bank shall handover possession of the property back to the petitioners.

(3) By the time the 5th instalment is paid, the petitioner would have cleared Rs.1,00,00,000/- (Rupees one crore only). At that time the Bank shall finalise the statement and inform the amount to be payable in the last, namely, 6th instalment. Upon such intimation, the petitioner shall make payment of the last instalment.

(4) If the petitioner commits default in making payment of anyone of these instalments, the benefit granted by this order will stand withdrawn.

9. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

10. Post for reporting compliance on 10-4-2017.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

21st November, 2016.
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AND
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(per VRS, J.)



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