

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

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

WRIT PETITION Nos.9932 and 11138 OF 2016

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

These two Writ Petitions can be disposed of by this common order as the question involved is common and the factual matrix is also identical.

The writ petitioners have secured financial assistance from the respective banks, which are arrayed as the respondents. They developed Emu farms for the purpose of rearing those birds. They have established these farms, but however, it is alleged, due to lack of supporting infrastructural facilities, the farms could not be run as the farm produce could not be effectively marketed. Therefore, managing and running the farms became a very difficult task. In fact, it is alleged that the birds have been carried to the nearest forest area and released into the forest at least to enable them survive on their own. In these set of circumstances, all the farm owners have taken up the matter with the respective bankers, State Bank of India and NABARD, which takes care of the agricultural financing benefits. It is also represented before us that the matter has been taken up with the Central Government for providing some kind of assistance to enable the farm owners to tide over the difficulties encountered by them. It is represented that the matter is likely to be decided one way or the other as a policy measure.

But at the same time, we are also conscious that the financial institutions, which have lent money, cannot go without recovering the said monies. Otherwise, the very vitals of the financial institutions will get eaten up. Therefore, the respective bankers have fallen back upon the provisions of the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

The Parliament, with a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith and incidental thereto, enacted the SARFAESI Act.

There is no dispute on the factual count that the respective writ petitioners are 'borrowers' and they answer the said expression as defined in Section 2(1)(f) of the Act. The respondent bank answers the description of 'bank', as defined in clause (c) of sub-section (1) of Section 2, as it is a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949. There is also no further difficulty for us to hold that 'default' has been committed as was defined in Section 2(1)(j). The expression 'financial asset' has been defined in Section 2(1)(l) in the following terms:

“ **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.

Consequently, the mortgage created by the respective writ petitioners renders the same as a 'financial asset'. There is also no difficulty that the respective accounts of the borrowers have been declared as 'non-performing assets' as per the definition assigned to the said expression in clause (o) of sub-section (1) of Section 2. The expression 'secured asset' has been defined in clause (zc) of sub-

section (1) of Section 2 of the Act as meaning the property on which the security interest is created.

Section 13 is included in Chapter - III of the SARFAESI Act, which dealt with Enforcement of Security Interest. Section 13 would set out that any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act. Thus, the SARFAESI Act is a special piece of legislation made by the Parliament for achieving a special objective of securing the enforcement of the security interest of the secured creditor. That is the reason why a special provision is created in sub-section (1) of Section 13 of the SARFAESI Act by making it clear that the security interest created in favour of any secured creditor can be got enforced without the intervention of the Court. The intention of the Parliament is so very clear that it wanted to address the malady of the defaults committed by the borrowers in repayment of the debt due by them, resulting in getting into the very vitals of the secured creditors and more particularly financial institutions including those in the banking sector. Under sub-section (2), the secured creditor, by delivering a notice, in writing, to any borrower whose liability remained unpaid, can call upon him to discharge in full such liabilities within 60 days. Even after receipt of such a notice delivered under sub-section (2) of Section 13, if the borrower does not honour the commitment by discharging in full the liability and thus fails to do so, sub-section (4) empowered the secured creditor to take recourse to one or the other of the measures provided there under to recover his secured debt. Clause (a) thereof specified that the secured creditor may take possession of the secured asset of the borrower including right to transfer by way of lease, assignment or sale for realizing the secured asset. Thus, a secured

creditor has been vested with a special power to take possession of the secured asset of the borrower and also liquidate it by way of sale for realizing the debt.

Therefore, the provisions contemplated by Section 13 of the aforesaid Act are liable to be invoked in these cases. The notice drawn and delivered under sub-section (2) of Section 13 could not be complied with by the petitioners as they are not in a position to run the farm or generate enough resources there from to liquidate the liability. In these circumstances, steps have already been taken by the respective bankers to possess the asset and then, seek to liquidate it by offering it for sale.

We are alive to the fact that when the operators of the agricultural sector are pushed to the wall and are made to face too much of a hardship to bear, all because of their inability to liquidate the liabilities, they are prone to get distressed easily and take recourse to extreme measures which would not only leave the problem unresolved but would also leave another problem of a huge dimension for the society. The fall-out from any such extreme measures will have disastrous consequences as others, who may find some little interest in pursuing 'Agriculture' as an avocation, may hesitate to take to agricultural sector as it is no longer profitable or worthy of pursuing as an avocation. In such a situation, not only the rural economy but the food-grain sector would also get impacted greatly which would not in any manner be useful to the society at large, as this country is yet to be industrialized greatly and the rural India continues to be the best place for living by majority of the population. The agricultural lands cannot be left unproductive. Hence, we consider it appropriate to adopt a balanced approach by trying to reconcile the interests of both sides.

Though the action of the respective bankers as it is cannot be

described as unjust act, inasmuch as their actions are in conformity with the provisions contained under the SARFAESI Act, but yet, we feel that the ends of justice would be better served if we defer the compulsion imposed upon the respective borrowers by the respective bankers for a period of four weeks. Accordingly, we direct the respective bankers not to put to sale any of the secured assets belonging to Emu farm owners, who have obtained such financial assistance and in case, the asset has already been put to sale, the said sale may not be confirmed and 75% of the offered amount/bid amount may not be collected from the best bidders till the end of July 2016. In the meantime, the respective petitioners shall endeavour to liquidate the liability either completely or substantially, so that they can take up the matter of liquidating the balance amount in installments not exceeding six. If, in the meantime, either the Central Government or the State Government or NABARD takes any policy decision offering any help or assistance, the respective bankers will regulate their measures of securitization strictly in conformity with such a policy decision.

With this, the Writ Petitions stand disposed of. No costs.

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

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR. B. SIVA SANKARA RAO, J

06.04.2016
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