THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

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

WRIT PETITION NO.35054 OF 2015

JUDGMENT: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted by the three petitioners seeking a writ of Mandamus for declaring the possession notice dated 03.10.2015 issued in terms of and in accordance with sub-section 4 of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by the respondent – bank, as bad in law and unsustainable.

It appears that on an application made by the petitioners seeking sanction of credit, the respondent – bank through its communication dated 27.06.2013 has sanctioned an amount of Rs.3.50 crores representing 'Miscellaneous Cash Credit limit' subject to certain terms and conditions specified therein. It appears there was default in liquidating this liability. Consequently, the impugned possession notice dated 03.10.2015 has been issued. Calling in question the validity of the said notification, the present writ petition is instituted.

The Parliament with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for other matters connected therewith, enacted the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act'). The expression borrower is defined in section 2 (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 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.

From the elaborate definition provided under the statute to the expression ‘borrower’, there is no difficulty for us to arrive at a finding that the petitioners answer the description of borrower. Similarly, going by the definition of bank as defined in Section 2 (c), the respondent – bank would answer the said description.

The expression debt has been defined in clause (ha) of Section 2 of the Act as meaning the same as is contained in clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In this 1993 enactment, the expression ‘debt’ has been defined as under:

> “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

Therefore, the outstanding liability of the petitioners falls within the four corners of the definition ‘debt’. Similarly, default means- non payment of any principal debt or interest thereon as contained in Section 2 (j) of the Act.

Section 13 is organised to fall in Chapter – III of the Act, where enforcement of security interest is provided for. Sub-Section (2) of Section 13 contemplated that where any borrower makes any default in repayment of secured debt or instalment thereof, and his account in respect of such debt is classified by the secured creditor as 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 notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

On 31.12.2014 the debt has been declared by the respondent – bank as non-performing asset. In that view of the matter, the Bank has drawn a notice under sub-section 2 of Section 13 of the Act and delivered it to the writ petitioners on 02.04.2015 and in spite of receiving the said notice and notwithstanding the expiry of 60 days time provided therefor for repayment, since no payments have been made, the respondent – bank through the impugned notice has availed the facility provided under sub-section (4) of Section 13 of the Act, wherein it is spelt out that where the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover the secured debt. First of such measures, which has been provided under clause (a) thereof sets out that possession of the secured asset of the borrower can be taken and the right to transfer by way of lease, assignment or sale for realising the secured asset can also be undertaken.

In that view of the matter, we hold that the impugned possession taken notice issued by the respondent – bank under sub-section (4) of Section 13 of the Act cannot be taken exception to.

Section 17 of the Act has provided a measure of preferring appeal to any person who is aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Act taken by the secured creditor. Therefore, the impugned measure adopted by the respondent – bank under sub-section (4) of Section 13 is an appealable one and hence the discretion which is liable to be exercised by us under Article 226 of the Constitution of India is not liable to be exercised in view of the principle of availability of equally efficacious remedy.

But however, while issuing notice before admission on

28.10.2015, this Court directed the petitioners to deposit an amount of Rs.1.50 crores within a period of 6 weeks. We are now informed at the bar that this order has since been complied with. Still, a little more than Rs.2.00 crores is liable to be paid by the petitioners and is also liable to be recovered from them. In that view of the matter, we leave it open to the respondent – bank to liquidate the outstanding liability duly taking credit of the payment made pursuant to the order passed by this Court on 28.10.2015. It is open to the petitioner to pay and liquidate their liability in one or more number of instalments. But however, the entire liability is to be liquidated within a maximum period of 60 days to be counted from today, failing which it shall be open to the respondent – bank to workout the remedies available to it under law for recovering the same.

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

15.02.2016
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