

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.7631 OF 2016

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

The Bank of India, Mehidipatnam Branch represented by its Chief Manager maintained the writ petition against the five respondents including the Debts Recovery Tribunal, Hyderabad (for short, 'DRT'), M/s.Pratap Poultry Farm, a partnership firm represented by its partners viz., L.V.Pratap Reddy and L.Santha and the Union of India represented by its Secretary, Banking Division, New Delhi. The prayer in the writ petition is to call for the records pertaining to the order (notice) reference F.No.31/1/2000-DRT(H), dated 29.05.2015 issued by the 1st respondent and to quash the same as illegal, arbitrary and unconstitutional and consequently to declare the orders dated 09.11.2015 are not in force so as to permit the petitioner-creditor Bank to go for public e-auction of the security interest/secured assets and pass such other just orders.

2) The affidavit filed in support of the writ petition of the Chief Manager of the petitioner-Bank supra reads that the 2nd respondent-firm represented by its partners/respondent Nos.3 and 4 availed financial assistance and created equitable mortgage by deposit of title deeds pertaining to the landed property with poultry sheds and with building which are standing in the name of Sri L.V.Pratap Reddy, 3rd respondent, in different extents and for the debt classified as non-performing asset (for short, 'NPA'), the bank initiated measures for recovery of the secured debt under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act') demand notice and for non-

payment, issued possession notice under Section 13(4) of the Act and proceeded to take possession of the mortgaged properties, for their failure to pay despite undertaking to pay. Having received the possession notice supra, the firm and its partners supra filed S.A. No.478 of 2015 claiming as if the lands are agricultural lands and are exempted by Section 31 of the Act from the applicability of the Act among other grounds including against classification as NPA despite the same is duly classified and the lands are agricultural lands, nor is in use as such, muchless capable of being used for agricultural purposes from different activity is running therein. It is further averred that in S.A. No.478 of 2015 filed before the Chairman, DRT who is the in-charge presiding officer from Calcutta, there was an interim order granted in I.A. No.3312 of 2015 dated 09.11.2014 which reads 'list the matter for hearing on 18.11.2015 at Hyderabad, till such time the defendant-bank should not make any further action against the secured assets of the applicant. The bank filed counter affidavit on 18.11.2015 opposing the above interim order, but the case was not taken up for hearing due to non sitting of the presiding officer and subsequently posted for hearing but the presiding officer could not take up for hearing of said petition. The interim orders operate only till 18.11.2015 for not extended by the Tribunal from time to time subsequently. Further, the postings are given by the Tribunal from time to time of the S.A. No.478 of 2015 viz., 04.12.2015, 14.12.2015, 22.12.2015, 20.01.2016, 22.01.2016, 10.02.2016 and 21.03.2016 for no regular sitting of the presiding officer in DRT. Further, on enquiry, it came to know that, an administrative order dated 29.05.2015 was passed by the Tribunal under the signature of the Registrar, DRT as follows:

“Ld.Advocates and the parties are put to notice that in the matters where ad-interim orders are passed till a particular date or next date of hearing and in the event the Hon'ble Presiding Officer is not sitting at Hyderabad on the said date, the ad-interim orders in such matters would be extended and adjourned to the next immediate date of the sitting of the

Hon'ble Presiding Officer at Hyderabad.

This issues with the directions of the Hon'ble Presiding Officer.”

3) It is contended that by virtue of said orders of the Tribunal, dated 29.05.2015, the interim orders dated 09.11.2015 are being extended from time to time, from which the respondents 2 to 4 are enjoying the interim direction dated 09.11.2015 without hearing, from which the Bank is unable to proceed further under the provisions of the Act, and the 1st respondent/Tribunal represented by Registrar or the presiding officer of it are not entitled to pass such restrained orders and the orders dated 29.05.2015 are thereby illegal, capricious and unconstitutional and sought for setting aside the same. While ordering notice before admission, this Court ordered interim suspension of the impugned blanket order dated 29.05.2015 supra granting automatic extension of the interim orders passed by the presiding officer including the one dated 09.11.2015 supra until further orders.

4) The respondents 2 to 4 of the writ petition put forth their appearance and filed stay vacate petition with counter affidavit saying the writ petition is not maintainable and remedy of the bank is file appeal before the Debts Recovery Appellate Tribunal under Section 18 of the Act if at all aggrieved from the orders of the Tribunal supra. The other contention is that second respondent is a proprietary concern of the 3rd respondent and the 4th respondent is not a partner of it, but for 4th respondent also stood as guarantor with the 3rd respondent for the financial assistance. The other contentions are that classification of the secured debt as Non-Performing Asset and issuing demand notice are untenable, so also the subsequent possession notice dated 17.10.2015 under Section 13(4) of the Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules') that the lands are agricultural lands and under cultivation and the revenue records show the same and recourse to the provisions of the Act of the

agricultural land is barred under Section 31(1) of the Act. It is further contended that due to enormous work load at Calcutta and also at the DRT from many instances of interim orders are not being extended, the in-charge presiding officer by common order dated 29.05.2015 supra directed that where ad-interim orders are passed till a particular date or next date of hearing, on said date, such ad-interim orders would be extended to the next date of sitting in the event of presiding officer not sitting at Hyderabad, on such date and thereby the interim order dated 09.11.2015 is in force by extension from time to time for no final hearing taken up by the presiding officer and sought for dismissal of the writ petition.

4) Heard and perused the material on record.

5) Section 17 of the Act, provides for any person including borrower, aggrieved by any of the securitization measures referred in Section 13(4) of the Act taken up can appeal to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date of such measures had been taken which is no doubt subject to payment of prescribed fees and the Tribunal after examining the facts and circumstances, and if it is produced by the parties come to the conclusion of measures taken under Section 13(4) of the Act by secured creditor are not according to the provisions of the Act or the rules made thereunder, require restoration of management of the secured assets to the borrower or restoration of possession of the assets to the borrower or order declare the recourse as invalid and restore possession or management of secured assets to borrower or as the case may be passed such order as it may consider proper and necessary in relation to the recourse by secured creditor. A perusal of the impugned order passed by the Tribunal dated 09.11.2015 referred supra leave about the order is without assigning any reasons and laconic, mentions as an ex parte ad-interim order at the hearing before

notice, by dispensing notice in passing the interim order against the respondent-secured creditor bank. It is while passing the ad-interim order, posted the matter undisputedly to 18.11.2015. There is no specific order of extension of the same undisputedly, muchless after hearing, even the counter affidavit of the respondent-secured creditor was filed on date of first hearing fixed on 18.11.2015 itself, for the incharge presiding officer did not hold the bench on that day.

6) The Registrar of the Tribunal has no adjudication powers. There is no written order of the Chairman of the Tribunal even by any common order leave about any such common order is not valid. The alleged common order/notice by Registrar of the Tribunal vide reference F.No.31/1/2000-DRT(H) dated 29.05.2015, referred supra, says whenever the presiding officer is not holding the sitting, the interim orders earlier passed automatically extends until further orders. Same is perse illegal even there are any oral instructions to the Registrar by the Presiding Officer of the Tribunal. It is not even the order passed in writing in this particular case by the presiding officer but for on the alleged oral instructions of the presiding officer, the Registrar of the Tribunal placed the same on the notice board. When the presiding officer even cannot pass any orders orally by sitting somewhere in any matter without hearing including for any extension being an adjudicatory authority meant to hold sittings and hear the matters either as regular officer or even as in-charge officer as the case may be. Once, such is the case such an oral instruction by him if at all for such a notice commonly and as a blanket order for all matters in saying whenever there were earlier interim orders and on the dates fixed for hearing there was no sitting of the presiding officer for hearing, the interim orders automatically will extends until further orders is not only unjust, arbitrary and uncalled for, but also illegal perse. Thereby, said order/notice dated 29.05.2015 supra is liable to be quashed and accordingly quashed for same cannot be given effect to say in any

matter by virtue of the same, as if interim order in force.

7) Once such is the case, now the point for consideration further is whether the interim order dated 09.11.2015 is in force or not on and from 18.11.2015. It is the contention of the learned counsel for the writ petition respondents 2 to 4 relying upon the decision of the Rajasthan High Court in **Anil Chitoda V. State of Rajasthan**^[1], that interim orders cannot be deemed to have been vacated on day or dates when matter did not reach and thereby the order dated 09.11.2015 is for all purposes in force, even after 18.11.2015 without any specific further order of extension. In the above expression interim order was passed after notice and when respondents failed to appear despite notice and after hearing on merits and there is nothing to indicate the interim order was intended to be limited for a particular period and the order sheet shows that interim order was continued until next date and when in the event matter not reaching for consideration, interim order thereby cannot be treated as vacated. The decision has no application to the facts on hand. The Rajasthan High Court referred in the judgment at para No.30, the expression of the Apex Court in **Ashok Kumar V. State of Haryana**^[2] where it is clearly laid down that unless specifically extended, an interim order for a limited period cannot be considered as continuing in operation. It is also observed referring to the earlier expression of the Apex Court in **Jang Singh V. Brij Lal**^[3] based on the maxim *actus curiae neminem gravabit* that an act of Court shall prejudice no man remains the highest principle for the guidance of the Court in the matters of administration of justice.

8) The other decision placed reliance by the respondents 2 to 4 is of High Court of Punjab and Haryana in **Malook Singh**^[4] where a contempt of Court proceedings by suo motu action initiated for arrest of the petitioner stayed by High Court in a protection matter and in

considering the matter the Punjab High Court only placed reliance on the expression of the Bombay High Court in **Govinda Bhagoji Kamable V. Sadu Bapu Kamable**^[5]. In the expression of the Bombay High Court in **Govinda Bhagoji** supra there was an interim stay order provides for stay meantime. It reads that “notice to respondents returnable on 09.12.2002. In the meantime ad-interim exparte relief in terms of prior clause (b)”. It was observed that said order was not vacated later. Intention of the Court which issued the same was to issue notice and grant stay in the mean time and from the phrase ‘in the mean time’ used in the order as per dictionary meaning ‘till happening of a particular event or until something expected happens’ and the said event was hearing of the application after service of notice to respondents and whenever the Court intends to grant interim relief to a particular date, it was always mentioning in the order specifically as operative till that date and it was not so mentioned and thereby stay order is in force for not vacated. The conclusion arrived of the order deemed in force is from what the general practice of mentioning otherwise as till a date.

9) In fact expression of the apex Court in **Ashok Kumar** supra referred in **Anil Chitoda** of Rajasthan High Court supra clearly speaks as a general principle that unless specifically extended, an interim order for a limited period cannot be considered continue in operation. Further, the Apex Court even earlier in a matter like the one on hand cleared the cloud in **Dr.Luis Proto Barbose V. Union of India**^[6] (3JB) while interpreting the order came before it which reads:

“List the matter on 30th October, 1990. In the meantime status quo as on today will continue”.

10) The Apex Court held that during terminal point of the operation of the restrained, when the expression ‘in the mean time’ is

arguable. That expression takes its colour from the context, their words of relation referred not only to a time. Therefore the status quo is to end on 30.10.1990 that is the outer terminal point of the aforesaid order. Thus, once the law of the land in interpreting the words 'in the mean time' by fixing a date for hearing, it is categorically that the outer limit to terminate the force of the order is the next hearing date fixed.

11) Thereby, there is no force to accept the contention of the respondents 2 to 4 of the writ petition that the time given by passing the interim order as mean time on 09.11.2015, cannot be construed of the order terminates on 18.11.2015 unless extended. It is not even the case of respondents 2 to 4 that they filed any application for extension of the interim dated 09.11.2015, on 18.11.2015 to contend, it can be allowed to give effect from 18.11.2015.

12) From the above, there is nothing to say the interim order is in force even after 18.11.2015. However, the writ petition filed by the Bank, with affidavit of the Bank Manager, spells out that the interim order is in force and preventing the bank to its prejudice from proceeding further under the provisions of the Act pursuant to the impugned sale notice before the DRTH. It is clear therefrom that the Bank is also giving respect to the order dated 09.11.2015, though it is not in force after 18.11.2015 as detailed supra, by the bank simply relying on the general blanket illegal order passed by the Registrar as per the alleged oral instructions of the presiding officer of where there was no sitting on the dates of hearing till which interim orders was passed those shall continue until further orders.

13) Having regard to the above, the writ petition is disposed of while setting aside the orders dated 29.05.2015, by holding further that there is no interim order in force pursuant to the order dated 09.11.2015, after 18.11.2015. However from the parties till date are under the impression of the interim order is in force, the status quo as

on today is ordered to be maintained only till date of next hearing before the Debts Recovery Tribunal, when the status quo ceases to enable the bank to proceed further according to law. The Debts Recovery Tribunal on the date of next hearing is directed to pass appropriate orders if any after hearing the parties. There is no order as to costs.

14) Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

SANJAY KUMAR, J

Dr.B.SIVA SANKARA RAO, J

11-07-2016
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[\[1\]](#) MANU/RH/0575/2009

[\[2\]](#) MANU/SC/0643/2007

[\[3\]](#) MANU/SC/0006/1963

[\[4\]](#) MANU/PH/0415/2013

[\[5\]](#) MANU/MH/0393/2004

[\[6\]](#) AIR 1992 SC 1812