

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
+ WRIT PETITION No. 6932 OF 2016

% Dated 04.03.2016

M/s Sree Chandrika Foods

.... Petitioner

Vs.

\$ Andhra Bank, Tanuku,
Rep. by its Authorized Officer & the Chief Manager
& another

....Respondents

! Counsel for the petitioners : Sri M. Suryanarayana

^ Counsel for the Respondents : Ms. Dyumani

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? Cases referred

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

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M/s Sree Chandrika Foods & another

.... Petitioner

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JUDGMENT PRONOUNCED ON 04.03.2016

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? yes
 3. Whether Their Lordship wish to see the
fair copy of the Judgment? No

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

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WRIT PETITION No. 6932 OF 2016

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

The petitioners herein have availed certain financial assistance from the 1st respondent Andhra Bank. It appears, they have carried on business, but ended up in not repaying the money to the bank. It also appears, the last of the payments made by the petitioners was nearly four years back on 08.03.2012 when they paid Rs.6 lacs to the credit of the loan account. For the default committed in repaying the debt, the loan account has been declared as a 'non-performing asset' by the bank and hence, it has started initiating securitization measures as provided for under Section 13 of the Securitization and Reconstruction of Financial Assets and Security Interest Act, 2002 (for short, 'the Act'). It is questioning these measures, the present Writ Petition is filed.

Heard learned counsel for the petitioners and Ms. Dyumani, learned Standing Counsel for the respondent bank.

No meaningful explanation has been forthcoming from the petitioners as to the reasons why they have committed default in liquidating the liability, except taking a stock ground that due to power-cuts, cyclones and unprecedented rains, agricultural operations in the

State have been badly affected with a spill over effect on the rice mill business, which the petitioners carried on. These supernumerary difficulties narrated by the petitioners cannot be accepted by this Court.

The 1st respondent bank has issued a notice demanding liquidation of the entire liability, in terms of and in accordance with sub-section (2) of Section 13 of the Act. Even after expiry of 60 days there from, the petitioners made no effort whatsoever to liquidate the liability. The bank approached the Debts Recovery Tribunal by instituting O.A. No. 321 of 2012 for recovering amount of nearly Rs.1.6 crores as the outstanding liability. Recovery Proceedings No. 179 of 2014 in O.A.No. 321 of 2012 have been initiated by the bank and the Debts Recovery Tribunal, Visakhapatnam has passed an order dated 03.12.2014 providing an opportunity to the petitioners to clear the outstanding liability within 15 days from the date of receipt of the notice, failing which the recovery process would be initiated by adopting the modes specified therein, namely attachment, sale of movable and immovable property, arrest of detenu or appointing a Receiver for management of movable and immovable properties, etcetera, but yet, there was no response from the petitioners. As against more than Rs.1.6 crores of liability as of 31.12.2014, the petitioners gracefully offered to pay Rs. 62 lacs as a one-time settlement, to be agreed by the respondent bank. Since the offer was found to be so disappointing, the 1st respondent bank has communicated through their letter dated 29.03.2012 itself that the proposal of receiving Rs. 62 lacs as full and final settlement is not acceptable. Therefore, it is a clear case where the petitioners have been provided multiple opportunities by the 1st respondent bank to

liquidate the entire liability, but they are procrastinating the same on one pretext or the other.

In fact, Ms. Dyumani, learned Standing Counsel for the 1st respondent bank, upon instructions, would submit that the present sale notice, which was issued on 05.02.2016, is the sixth one issued proposing to put the secured asset to sale on 10.03.2016 between 03.00 and 04.00 P.M. and hence, she would submit that there is no justification whatsoever for this Court to show any indulgence to the cause of the petitioners.

The respondent bank answers the description of the expression 'bank' as defined under Section 2(1)(c) of the Act. We are also satisfied that the petitioners herein answer the description of 'borrower', 'default' committed by them and 'secured asset' created by them as defined in clauses (f), (j) and (zc) of sub-section (1) of Section 2 of the Act. Section 13 of the aforementioned Act has clearly contemplated measures to be taken for securitization of the loan accounts, which have become 'non-performing assets'.

Public-sector banks like the 1st respondent bank have been adopting a very liberal approach in lending monies, particularly in the rural sector with a view to provide a safe and stable platform for credit, so that the citizens can be saved to the extent possible from the clutches of unscrupulous private money-lenders. Banks like that of the 1st respondent accept monies by way of fixed deposits from their customers. They also generate income by rendering certain financial services to the customers. The resources so generated are ploughed back for the benefit of the society at large by granting loans and certain priority criteria are also adopted, so that the lending by public financial institutions, such as the 1st respondent bank would get evenly distributed amongst all the sectors, such as industrial, agriculture,

home loan, personal affairs, etcetera. If the borrowers do not repay the loan amounts promptly, the bank will find it not only difficult to recycle the monies accepted by way of fixed deposits from the customers, but might even find it difficult to provide quality services to the rest of the customers of the bank. Discipline is not only to be employed by the bank in its day to day business activities but even customers of a bank require to show a steadfast commitment and discipline. Failure to live up to the promises made, which alone induce the bank to lend money, will have a cascading effect on the business operations of a bank. This apart, when the 'non-performing assets' are mounting, the very vitals of the economy gets impacted. Keeping all these factors in mind and to keep the economy afloat in the most-testing and trying circumstances, the SARFAESI Act has been ushered in by the Parliament. This is a special piece of legislation intended to secure the interest of the financial institutions, while at the same time, affording a reasonable protection to the borrowers as well. When the measures adopted by the respondent bank by affording opportunity after opportunity to the petitioners to liquidate their liability have not been availed, there is nothing that this Court can do, particularly in exercise of its jurisdiction under Article 226 of the Constitution of India, which is essentially a discretionary jurisdiction, all the more so in the absence of any enforceable right in the hands of the petitioners vis-à-vis the 1st respondent bank. This apart, the transaction of financial arrangements entered into by and between the petitioners on the one hand and the 1st respondent bank on the other, have no element of public duty and hence, it falls squarely within the realm of private arrangement. Keeping all these factors in our mind, we regret to concede to the demand made by the learned counsel for the

petitioners that the 1st respondent bank shall be directed to negotiate with the petitioners and settle the dispute under ‘one-time settlement scheme’ nor do we see any justifiable reason for us to interdict the intended sale on 10.03.2016.

We therefore, dismiss this Writ Petition, but however, without costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

04th March 2016

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