

\$~31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3437/2016

COUNTRYSIDE AGRO PRODUCE

PVT. LTD. & ANR

..... Petitioners

Through: Mr. Manish Sharma with Mr.
Abhishek Agarwal & Ms. Chandni
Mehra, Advs.

Versus

PUNJAB & SIND BANK & ORS

..... Respondents

Through: Mr. Rajinder Wali, Adv. for R-1.
Mr. H.S. Parihar, Adv. for R-2/RBI
Mr. Dev P. Bhardwaj, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

25.04.2016

CM No.14701/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 3437/2016 & CM No.14700/2016 (for stay)

3. The petition seeks a mandamus to the respondent No.1 Punjab & Sind Bank (PSB) to act in terms of Master Circulars dated 2nd July, 2012, 1st July, 2013, 1st July, 2014, 25th March, 2015 and 1st July, 2015 of the respondent no.2 Reserve Bank of India (RBI) intended for drought affected areas and impugns the demand notice dated 13th April, 2015 and possession notice dated 23rd September, 2015 issued by the respondent no.1 PSB to the petitioners.
4. The counsels for the respondent no.1 PSB, respondent no.2 RBI and respondent no.3 Ministry of Finance appear on advance notice.

5. The case in a nutshell of the petitioners is that respondent no.1 PSB is not entitled to invoke provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 against the petitioners for the reason of the unit of the petitioners for which the petitioners had availed of the financial assistance from the respondent no.1 PSB being situated in drought affected areas in Maharashtra and with respect whereto the aforesaid Master Circulars have been issued by the respondent no.2 RBI.

6. I am *prima facie* of the opinion that such a question having local flavour is best left to be adjudicated before the concerned High Court which may be dealing with other such claims also. Though the same was put to the counsel for the petitioners but he contended that since this Court would also have jurisdiction and since the respondents are within the territorial jurisdiction of this Court and the State of Maharashtra is not a party to this petition, the petitioners want to argue here only.

7. Though this Court, as per the judgment of a five Judges Bench of this Court in *M/s Sterling Agro Industries Vs. Union of India* AIR 2011 Delhi 174, even if having jurisdiction is entitled to relegate the petitioner to the appropriate High Court but on the insistence of the counsel for the petitioners, he as well as the counsel for the respondent no.1 PSB have been heard on merits.

8. The petitioners had availed of the loan from the respondent no.1 PSB for setting up a juice extracting / processing and packaging plant on plot no. A1/1, MIDC, Indapur Five Star Industrial Area, District Pune, Maharashtra, as far back as in February, 2012 and 100% of the loan has been disbursed.

However admittedly even the construction of the unit of the petitioners is not complete. The counsel for the petitioners on enquiry, though without reference to any pleading, has contended that 90% of the civil construction work is complete and the plant to be installed therein, in a knocked-down construction, has been imported and is lying at the site. It is contended that construction was delayed because of construction cost overruns and the failure of the respondent no.1 PSB to grant additional facility inspite of being sought by the petitioners and because of the drought in Maharashtra.

9. Per contra, as per the letter dated 16th April, 2014 of the respondent no.1 PSB at page 338 of the paper book, the petitioners till then had only completed 65% of the work as against the 96% disbursement of the loan amount and as on 28th January, 2014, only a bare plot with no boundary wall and an incomplete shed on one side of the plot was found leading to the inference of the funds having not been properly utilized.

10. The counsel for the petitioners even now on enquiry states that the work is still held up and the petitioners are trying to get funds from other sources for completing the same.

11. The counsel for the petitioners inspite of asking as to how the drought has affected the loan repayment or the obligations of the petitioners vis-a-vis the respondent no.1 PSB has been unable to show any pleadings in this respect.

12. At this stage, though attention is drawn to ground 'O' but the petitioners have failed to expressly plead date-wise as to from when to when the construction was held up owing to the weather or the drought conditions. Rather, as per ground 'O' of the petition and according to the petitioners, during the entire time when the petitioners claims to have carried out the

construction, the same conditions were existing.

13. The purport of showing all this is that since the construction is still underway, the taking over of possession of the secured asset by the respondent no.1 PSB would not affect the petitioners and the petitioners can take up all the pleas as are being taken here, in the proceedings under Section 17 of the SARFAESI Act and which proceeding again before the Debt Recovery Tribunal (DRT) would enable the appreciation of facts and local conditions.

14. No case for granting any relief as is sought is made out without the petitioners establishing having been affected by the drought conditions.

15. The notifications of the respondent no.2 RBI for granting relief by the banks to those affected by the drought cannot be invoked by all and sundry to cover their defaults in repayment of the public dues.

16. The petition is accordingly dismissed however with liberty to the petitioners to in the proceedings under Section 17 of the SARFAESI Act take up the same pleas and with a clarification that DRT would take the decision on the said pleas uninfluenced by this order.

No costs.

RAJIV SAHAI ENDLAW, J

APRIL 25, 2016

‘gsr’..