IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE TMT.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16518 of 2017

M/s.Ensquare Engineerings India (P) Ltd.
Represented by its Managing Director
TN.Nitiyananda Rahavan
No.77 & 78, Tiny Sector, 1st Main Road
Ambattur Industrial Estate - South
Chennai - 600 058 ... Petitioner

versus

The Authorised Officer
Union Bank of India
SSI/TSK Nagar Branch
Plot No.1392, TNHB, 4th Street
Golden Colony, Anna Nagar West Extension
Chennai - 600 050 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Declaration, declaring that the petitioner having fulfilled the statutory conditions as per Section 31(j) of the SARFAESI Act are eligible to the benefit of the above section and the amount due is settled by operation of law and consequently directing the respondent to reimburse a sum of Rs.30,387.68 and return the petitioner's all original documents given to the Respondent at the time of availing loan as security, and further direct the respondent, to issue No Due Certificate in favour of petitioner, also to release the shares of the company mortgaged with Registrar of Company (ROC), Chennai.

For Petitioner : Mr.K.Manikandan

For Respondents : Mr.S.Parthasarathy

O R D E R

(made by S.MANIKUMAR, J.)

Petitioner has availed business loan from Union Bank of India, Chennai, for Rs.10,00,000/-. He could not pay the installments. Bank issued a notice dated 06.01.2017 under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.9,38,229/- together with contractual rate of interest from 01.10.2016 with monthly rests as per the terms and conditions of the loan documents executed by borrower, and to discharge the liabilities, within 60 days from the date of receipt of said notice.

2. Petitioner has contended that after receipt of the notice, he paid a sum of Rs.2,03,000/- on 06.03.2017, and sent a reply dated 10.03.2017 seeking further time till April 2017, to clear the balance amount. He also sent an e-mail dated 11.03.2017. After the receipt of the reply stated supra, the bank has not proceeded further. According to the petitioner, as on 24.07.2017, he was liable to pay Rs.7,96,447/- only. So far, he has made payment of Rs.8,26,831.68, detailed as hereunder:

Date	Amount in Rs.
06.03.2017	2,03,056.78
23.03.2017	12,345.00
30.03.2017	1,01,101.00
25.04.2017	3,45,678.00
25.04.2017	1,64,250.00
Total	8,26,831.68

3. According to the petitioner, he has paid more than 80% of the outstanding amount and in such circumstances, he is eligible to the benefit of Section 31(j) of the SARFAESI Act, 2002. He is eligible for refund of Rs.30,287.66. He further submitted that though a sum of Rs.8,26,831.68, has been deposited, bank has neither issued a "no due certificate" nor returned the documents.

4. Petitioner, has further contended that Section 31(j) of SARFAESI Act, 2002, expressly provides for concession to the borrower that no action under the SARFAESI Act, 2002, can be taken, if 80% of the loan amount is repaid.

5. Contending inter alia that the bank is not entitled to reimburse a sum of Rs.30,387.68, but liable to pay a sum of Rs.1,47,429.32 as on 24.05.2017 plus interest from 1.10.2016, the petitioner has sent a lawyer's notice dated 25.05.2017.

6. Since bank has not responded, left with no other alternative, petitioner is constrained to file a writ of declaration, declaring that the petitioner, having fulfilled the statutory conditions, as per Section 31(j) of the SARFAESI Act, 2002, he is eligible to the benefit of the above said section and the amount due is settled by operation of law and consequently, directing the respondent to reimburse a sum of Rs.30,387.68 to return the petitioner's original documents, given to the bank at the time of availing loan as security and to further direct the bank, to issue No objection certificate in favour of the petitioner and also to release the shares of the company mortgaged by the Registrar of Companies (ROC, Chennai).

7. Respondent bank has filed a counter affidavit stating that a sum of Rs.10,00,000/- was availed as working capital loan with repayment term of 60 Equated Monthly Installments, at the rate of Rs.16,677/- plus interest, and the term loan was secured with equitable mortgage by deposit of title deeds, registered as Document No.4591 of 2007 dated 08.09.2007. As per the guidelines of the Reserve Bank of India on 30.09.2016 account has been classified as Non Performing Asset. On 06.01.2017, bank has issued notice under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.9,38,229/- as on 13.08.2016 within the statutory period of 60 days. Responding to the above, the writ petitioner has remitted a sum of Rs.2.03 Lakhs on 06.03.2017 and sent a reply dated 10.03.2017 stating that the writ petitioner, is sourcing further payment from known circles and that the petitioner would clear the balance amount by the end of April 2017.

8. Bank has further submitted that, as on 30.09.2016, a sum of Rs.9,38,229/- was due and payable. A sum of Rs.8,26,831.68 has been paid. As on 25.04.2017, the petitioner has to pay Rs.1,47,429.32P plus interest, applicable at the contractual rate from 01.10.2016 till the closure of accounts.

9. Bank has submitted that though Section 31(j) of the SARFAESI Act, 2002, is not applicable to certain cases, where the amount was due less than 20% of the principal amount, it does not mean that the petitioner is not liable to pay the balance amount. Bank, in its counter affidavit, has categorically admitted that no action under the SARFAESI Act, 2002, can be taken, as the outstanding balance Rs.1,47,429.32 as on 25.04.2017, was less than 20% of Rs.9,38,229/- as on 30.09.2016. However, bank has contended that the above said amount can be recovered by way of filing a suit before the appropriate court.

10. Bank has further contended that though as on 25.04.2017 the amount outstanding was Rs.1,47,429.32P, as on 21.07.2017, amount outstanding was Rs.1,98,819.32. Bank has agreed to release the additional documents, only after the receipt of the entire dues in the loan account and thereafter, the mortgage would be cancelled. Bank has also stated that the charge created by the Registrar of Companies, the same would also be released, on receipt of the entire dues. Bank has further contended that writ petitioner has attempted to frustrate the action of the bank to recover the total outstanding amount. For the reasons stated supra, bank has prayed for dismissal of the writ petition.

11. Writ petitioner has filed a reply affidavit dated 25.07.2017 reiterating the very same grounds, and contended that the bank cannot take recourse to filing of a suit, even for the alleged outstanding balance amount.

12. Added further, placing reliance on a decision of Punjab and Haryana High Court in Renu Gupta and Another vs. DRT and others reported in Manu/PH/1794/2013, Mr.K.Manikandan, learned counsel for the petitioner, submitted that proceedings under the SARFAESI Act, 2002, cannot be initiated, in a case where the amount due is less than 20% of the principal amount and interest thereon. Inviting the attention of this court to the decision of the Hon'ble Supreme Court in Appeal (Civil) No.5634 of 2016 dated 01.12.2016 between Raghunath Rai Bareja and another vs. Punjab National Bank and others, he further submitted that, as between law and equity, equity can supplement the law and it cannot spare or override.

13. Learned counsel for the petitioner further submitted that respondent cannot even file a suit for recovery of the alleged amount due and payable for the reason that the petitioner had already remitted more than 80% of the debt due.

14. Per contra, Mr.S.Parthasarathy, learned counsel for the bank, submitted that relief sought for is wholly misconceived. Learned counsel for the bank has candidly admitted that as on 25.04.2017, the amount outstanding was Rs.1,47,429.32, which is less than 20% of Rs.9,38,229/- as on 30.09.2016, and therefore, bank cannot proceed against the writ petitioner under SARFAESI Act, 2002. However, he submitted that the bank can proceed against the petitioner by filing a suit. According to him, as on 21.07.2017, the outstanding amount was Rs.1,98,819.32. For the above reasons, he prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

15. As per the demand notice dated 06.01.2017 issued under Section 13(2) of the SARFAESI Act, 2002, the amount due and payable by the writ petitioner as on 30.09.2016, was Rs.9,38,229/-. Responding to the notice, the petitioner has sought time to clear the entire debt, by the end of April 2017, which means Rs.9,38,229/-, as on 25.04.2017, and that he has paid a sum of Rs.8,26,831.68. As per the version of the bank, as on 25.04.2017, the balance amount to be paid is Rs.1,47,429.32 plus interest, applicable at the contractual rate from 1.10.2016, till the closure of the account.

16. As per Section 31(j) of the SARFAESI Act, 2002, provisions of SARFAESI Act, 2002 shall not apply to any case, in which the amount due is less than 20% of the principal amount and interest thereon. Though the writ petitioner has contended that as per Section 31(j) of the SARFAESI Act, 2002, he is eligible for the benefit that provisions of SARFAESI Act, 2002, shall not apply to, any case in which the amount due is less than twenty per cent of the principal amount and interest thereon and that liability is restricted only to 80% of the principal amount and interest, and that therefore, the bank has to refund a sum of Rs.30,287.68 and further contended that the bank is obligated to return all the documents, issue a No due certificate and release shares mortgaged with the ROC, Chennai, this court is not inclined to accept the said contention for the reason that, as rightly contended by the learned counsel for the bank, the exact meaning of Section 31(j) of the SARFAESI Act, 2002, would be that no proceedings under the provisions of SARFAESI Act, 2002, can be initiated, in case, the amount due was less than 20% of the principal amount and the interest. Thus, under Section 31(j) of the SARFAESI Act, 2002, the bank cannot take any measures for recovery, which includes measures under Section 13(4) of the Act.

17. On the contention of the learned counsel for the petitioner that the bank cannot even file a suit for recovery of the balance outstanding amount, at this juncture, we are not inclined to record any opinion.

18. No benefit is conferred under Section 31(j) of the SARFAESI Act, 2002, to the borrower or the guarantor, as the case may be, that if 80% of the amount is paid, then the whole debt has to be wiped out and consequently, the borrower/guarantor, as the case may be, is entitled to a No due certificate from the bank, discharge of the mortgage and release of documents, and in the case on hand, including release of shares from the Registrar of Companies. Such an argument is wholly untenable and in our considered view, that is not the intention of the Legislature.

19. Judgment of the Punjab and Haryana High Court in Renu Gupta and Another vs. DRT and others reported in Manu/PH/1794/2013, only reiterates the statutory provisions of Section 31(j) of the SARFAESI Act, 2002, which the learned counsel for the bank, has fairly accepted. There is no dispute over the observation made in Punjab National Bank's case that equity can only supplement the law but cannot spare or override. In the case on hand, the petitioner, who had discharged loan amount of Rs.8,26,831.68 only, as on 25.04.2017, as against Rs.9,38,229/- as on 30.09.2016, has filed the instant writ petition for a declaration as stated supra, by introducing a new theory of discharge of debt, when admittedly by letter dated 10.03.2017, he has requested the bank to grant time till April, 2017. There is absolutely no equity in favour of the petitioner.

In the result, writ petition is dismissed. However, there shall be no order as to cost.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asr

To

The Authorised Officer
Union Bank of India
SSI/TSK Nagar Branch
Plot No.1392, TNHB, 4th Street
Golden Colony, Anna Nagar West Extension
Chennai - 600 050

+2cc to Mr.K.Manikandan, Advocate Sr. 55625
+1cc to Mr.S.Parthasarathy, Advocate Sr. 55572

W.P.No.16518 of 2017

KK(CO)
VR(23/8/2017)