HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE Dr. SHAMEEM AKTHER

WRIT PETITION NO.9595 OF 2017

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this Writ Petition is to set aside the 3rd sale notice dated 25.02.2017, scheduling to auction the properties of the petitioner on 30.03.2017 pursuant to a sale notice published in the newspaper on 25.02.2017, as violative of principles of natural justice, Articles 14, 19(1)(g) and 300-A of the Constitution of India.

The petitioner had earlier approached the Debt Recovery Tribunal ('DRT' for short) questioning the first sale notice in S.A. No.115 of 2016. They filed I.A. No.249 of 2016 therein seeking stay of the sale. By its order dated 13.05.2016, the DRT directed the petitioner to pay Rs.1,00,00,000/- on or before the date of sale i.e., 03.06.2016; subject to payment of Rs.1,00,00,000/-on or before the date of sale, the respondent bank was directed to defer/stay the sale to be held on 03.06.2016; in case the petitioner failed to pay Rs.1,00,00,000/-, on or before the date of sale, the respondent bank was granted liberty to go ahead with the sale as per schedule; and the petitioner was directed to submit a concrete proposal, and to pay the entire dues, within one month after the date of sale, latest by 10.07.2016. The DRT made it clear that, in case the entire dues were not paid within the said period or within the period as allowed by the respondent bank, the respondent bank was at liberty to proceed further as per Rules.

Aggrieved thereby the petitioner filed W.P. No.16629 of 2016 before this Court and by order, in W.P.M.P. No.20504 of 2016 in W.P.

No.16629 of 2016, a Division Bench of this Court granted stay of confirmation of the sale scheduled to be held on 03.06.2016 subject to the petitioner depositing Rs.1,00,00,000/- on or before 02.07.2016. Thereafter the respondent bank issued another sale notice dated 22.08.2016 to auction the properties of the petitioner, questioning which they filed W.P. No.32620 of 2016. A Division bench of this Court, while ordering notice before admission on 27.09.2016, granted stay of all further action in pursuance of the sale notification dated 22.08.2016 issued by the respondent bank pending further orders.

Both W.P. No.16629 and 32620 of 2016 were heard by us and, by a common order dated 22.02.2017, we set aside the order of the DRT dated 13.05.2016 to the limited extent S.A. No.115 of 2016 was dismissed. S.A. No.115 of 2016 was restored to file, and the DRT was directed to adjudicate the S.A. on its merits. In our order dated 22.02.2017, we made it clear that we had not interfered with the interlocutory order passed by the DRT in I.A. No.249 of 2016 in S.A. No.115 of 2016. Both the Writ Petitions were, accordingly, disposed of. Thereafter the respondent bank issued the impugned sale notice dated 25.02.2017 seeking to put the secured assets to sale on an as is where is condition, under Section 13(4) of the Act read with Rules 8 and 9 of the SARFAESI Rules, 2002, to recover the dues from the petitioner of Rs.3,24,12,429.03 ps. The present Writ Petition is filed questioning the said sale notice.

Sri Ch. Ramesh Babu, Learned Counsel for the petitioner, would submit that, while directions 1 to 3 in para 3 of the order of the DRT dated 13.05.2016, are interlocutory in nature, the fourth direction is a final order, since complying with the order would result in disposal of the S.A. itself; it must be understood that this Court had impliedly granted stay of the said direction; as against the reserve price in excess of Rs.7.5 crores, the amount due from the petitioner is only 3.24 crores; Order 21 Rule 64 CPC requires the bank to put only that part of the property to sale which is sufficient to discharge the liability; and though this contention has not been raised in the Writ Petition, it is a pure question of law which can be urged even during the course of hearing.

On the other hand Sri S. Ashok Anand Kumar, Learned Counsel for the respondent bank, would contend that the respondent bank had sold the entire unit on an as is where is basis, it was not possible for the bank to segregate the property and sell it piece meal; the SARFAESI Act and the Rules made thereunder empower the bank to do so; reliance placed by the petitioner on **Ram Kishun v. State of U.P.**[1] is misplaced as the said judgment did not arise under the SARFAESI Act; the order of the DRT dated 13.05.2016 has not been complied with by the petitioner; as the jurisdiction of this Court has been invoked, without complying with the order of the DRT, this Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to interfere with the sale, more so as the bank is due an amount in excess of Rs.3.24 crores from the petitioner; and all the contentions now raised before this Court can as well be agitated before the DRT either in the pending S.A or by way of a fresh S.A.

As noted hereinabove, we had made it clear, in our order in W.P. Nos.16629 2016 and 32620 of 2016 dated 2.02.2017, that we had not interfered with the interlocutory order passed by the DRT in I.A. No.249 of 2016 in S.A. No.115 of 2016, which required the petitioner, among

---

[1] AIR 2012 SC 2288

others, to submit a concrete proposal and pay the entire dues after the date of sale latest by 10.07.2016. While the petitioner appears to have deposited Rs.1,00,00,000/-before the date of the first sale on 03.06.2016, they have not paid any amount to the bank thereafter. The aforesaid condition, stipulated by the DRT, requiring the petitioner to pay the entire dues by 10.07.2016 has not been complied with. As we had refused to interfere with the order of the DRT dated 13.05.2016, the said order continues to remain in force, and binds the petitioner herein.

Reliance placed by the petitioner on **Ram Kishun**[1] is misplaced as it did not arise under the SARFAESI Act. In **Ram Kishun**[1] a borrower had taken an agricultural loan from the bank to which the father of the appellant had stood as a guarantor; the bank had initiated proceedings for recovery and had ultimately sent the matter to the District Collector, for realization of the loan amount as arrears of land revenue; the Collector had issued a recovery certificate for the stipulated sum, and the property was sold for a far higher sum. It is in this context that the Supreme Court observed, relying on **Ambati Narasayya v. M. Subba Rao**[2], that there was a duty cast upon the Court to sell only such property, or a portion thereof, as was necessary to satisfy the decree; and the authority was duty bound to decide whether sale of a part of the property would meet the outstanding demand.

In the present case, the petitioner has not even requested the respondent bank to sell only a part of the property, nor have they approached the DRT in this regard. These contentions have not even

---

[2] AIR 1990 SC 119

been raised in the Writ Petition. As these contentions can also be urged before the DRT, before which S.A. No.115 of 2016 is still pending, we consider it wholly inappropriate to exercise our discretionary jurisdiction under Article 226 of the Constitution of India to interfere, more so as the petitioner has admittedly not complied with the order of the DRT, in I.A. No.249 of 2016 dated 13.05.2016, in its entirety. Suffice it to make it clear that, in case the petitioner approaches the DRT, their petition/application shall be considered on its merits uninfluenced by any observations made in this order.

The Writ Petition however fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 28.03.2017.

MRKR