HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.31381 OF 2017

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

M/s. Ramakanth and others, a partnership firm represented by its partner Sri G. Ramakanth, has filed this Writ Petition to declare the action of the first respondent in invoking the jurisdiction of, and in obtaining an order from, the Chief Metropolitan Magistrate, Rangareddy District, in Crl.M.P. No.512 of 2017 dated 31.08.2017 under Section 14 of the SARFAESI Act, as arbitrary and illegal.

Before this Court the petitioner claimed that it is a partnership firm, registered with the Registrar of Firms, on 17.11.2012; they have been carrying on business in Hotel and Restaurant services and Hotel Room Services with effect from 01.01.2011; they entered into a lease agreement with the land owners on 02.01.2013, for lease of plots 1, 2, 3, 12, 13, 14 in Survey Nos.94 and 95, admeasuring 1598 square yards, situated at Annojiguda village, Ghatkesar Mandal, Ranga Reddy District, for a period of thirty years. They started a hotel called "Chandraas Residency" in 2013; the first respondent sanctioned a loan of Rs.75 crores to M/s. Modex Systems, represented by its partner Sri G. Suman, in the year 2015 for which the 3rd and 4th floors of the subject property were mortgaged by the borrower in favour of the respondent bank; the petitioner was neither a party, nor was it aware of the said financial assistance extended by the first respondent; subsequently, on the loan being classified as a non-performing asset, action was taken by the first respondent, under Section 14 of the SARFAESI Act, by filing Crl.M.P. No.511 of 2017; an Advocate Commissioner was appointed, on 30.06.2017, to take physical possession of the subject property and hand it over the bank on

21.09.2017; and as the land owners had registered a lease deed in favour of the petitioner earlier, the proceedings instituted under Section 14 of the SARFAESI Act later, without notice to the petitioner, is arbitrary and illegal. Reliance is placed by the petitioner on **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited**[1] in this regard.

When the Writ Petition was listed for admission on 22.09.2017, Sri A. Krishnamraju, Learned Counsel for the respondent, sought time to file a counter-affidavit. In the counter-affidavit filed by the Chief Manager, Syndicate Bank, before us today, it is stated that the petitioner, a partnership firm, was constituted with two partners i.e., Sri G. Ramakanth (the deponent of this Writ affidavit) and Sri G. Srikanth; the deponent filed S.A. No.456 of 2017 before the Debt Recovery Tribunal, Hyderabad (for short "the DRT") on 15.02.2017 seeking to declare the E-Auction sale notice dated 27.01.2017, fixing the date of auction for the sale of the subject property as 22.02.2017, as arbitrary and illegal, and to set aside the same; though they filed an I.A. in the said S.A, no interim order was passed by the DRT; the respondent-bank issued a fresh E-Auction notice on 19.10.2017 fixing the auction date as 19.10.2017; the petitioner has suppressed material facts before this Court with the malafide intention of securing an interim order; the petitioner has also played fraud on this Court; consequently the Writ Petition is liable to be dismissed in limini; the subject property was mortgaged in favour of the bank, as security by Sri G. Suman and his wife Smt. G. Reshma, for the loan granted to M/s. Modex Systems; the subject property was mortgaged by deposit of the registered sale deed dated 02.01.2013, which was executed in favour of Sri G. Suman, by none other than the partners of the

[1] (2014) 6 SCC 1

petitioner-firm i.e., Sri G. Ramakanth and Sri G. Srikanth; the mortgaged property was only the third and fourth floors of the building constructed on the land leased by Sri G. Ramakanth and Sri G. Srikanth in favour of the petitioner-firm; the same lessors, along with two others, had subsequently executed a registered sale deed dated 30.03.2015, in favour of Sri G. Suman, who had later mortgaged the third and fourth floors of the subject property in favour of the respondent bank; the registered sale deed records that the vendors had put the purchasers in actual physical possession of the schedule property, and there were no encumbrances, charges etc on the schedule property; it is evident, therefore, that the petitioner had, in collusion with the purchaser, made a false declaration about the existence of a lease over the land on which the subject property was constructed; and the bank has already taken possession of the subject property on 14.09.2017.

Sri A. Krishnamraju, Learned Counsel appearing on behalf of the respondent-bank, would submit that the specific assertion in the registered sale deed, that the subject property was free from encumbrances, made the respondent-bank believe that there were no encumbrances over the mortgaged property; the partnership firm does not have a legal entity distinct and separate from its partners; the registered sale deed also records that consideration, for the sale transaction, was received by the partners of the petitioner-firm; however in S.A. No.456 of 2017, the deponent of this writ affidavit had alleged that the sale deed was executed by them on the assurance of Sri G. Suman that it was merely nominal, and was executed to enable him to furnish the schedule property as security for the loan obtained by him; and, if the averments in the S.A. are true, the petitioner firm and its partners are parties to the fraud, and have facilitated the mortgagor to avail a loan cheating the respondent-bank into believing that there were no encumbrances over the mortgaged property.

The registered lease deed (on which reliance is placed by the petitioner) is dated 02.01.2013, and thereby the subject property was leased in favour of M/s. G. Ramakanth and others, represented by its Partners Sri G. Ramakanth and Sri G. Srikanth (referred to as the lessees) for a period of thirty years. The two lessors (Sri G. Ramakanth and Sri G. Srikanth) are the only two partners of the lessee partnership firm M/s. G. Ramakanth and others. This lease deed, executed on 02.01.2013, was registered on the same day with the Sub-Registrar, Ghatkesar. Thereafter, the owners of the land (i.e., Sri G. Ramakanth and Sri G. Srikanth), along with two others, executed a registered sale deed in favour of Sri G. Suman on 30.03.2015. The commercial space in the fourth floor, with a built up area of 10,000 square feet including the common parking area in the cellar along with the undivided share of land admeasuring 220 square yards, was sold for a total consideration of Rs.1 crore thirty lakhs.

The sale deed, which was registered with the Sub-Registrar, Ghatkesar on 30.03.2015, records in Clause (3) that the purchaser (i.e., Sri G. Suman) was put in actual physical possession of the schedule property to have peaceful and amicable use and occupation thereof, along with the other owners in the complex. Clause (2), of the vendors covenants in the sale deed, records the assurance of the vendors, and their covenant, that there were no encumbrances, charges etc., whatsoever in respect of the schedule property, it was free from encumbrances and charges and, in the event any encumbrances were later found over the schedule property, the same shall be indemnified by the vendors to the purchaser. The only two partners of the petitioner firm are not only the lessors who executed a lease deed in favour of the petitioner-firm on 02.01.2013, but are also those who, along with two others, had executed a registered sale deed in favour of Sri G. Suman on 30.03.2015. The fact that a registered sale deed was executed by both the partners of the petitioner firm, along with two others, in favour of Sri G. Suman has been suppressed in the writ affidavit.

The deponent of this writ affidavit (Sri G. Ramakanth) had filed S.A. No.456 of 2017 before the DRT under Section 17 of the SARFAESI Act on 15.02.2017 wherein it was stated that Sri G. Suman had approached Sri G. Ramakanth, and had offered to advance a loan subject to execution of a sale deed, with respect to the subject property, as security towards the loan; Sri G. Suman had assured that, after repayment of the loan, he would execute a fresh sale deed in favour of Sri G. Ramakanth; Sri G. Suman had extended Rs.3,49,90,000/- as a loan to Sri G. Ramakanth; the sale deed was executed as a sham and nominal document, only as security for the loan and not as total sale consideration; Sri G. Suman had mortgaged the subject property with the first respondent-bank, and had obtained a loan for Rs.8.56 crores in the name of M/s. Modex Systems of which Sri G. Suman was a partner; Sri G. Suman had, thereafter, defaulted in repayment of the loan advanced to him by the respondent bank; when Sri G. Ramakanth and his family members sought to repay the loan, which they had borrowed from him, Sri G. Suman stopped all communication with them; and, in the meanwhile, the respondent bank had invoked the provisions of the SARFAESI Act. The fact that Sri G. Ramakanth, (the deponent of the present writ affidavit) had filed S.A. No.456 of 2017 before the DRT, Hyderabad, has also been suppressed in the affidavit filed in support of this Writ Petition.

Sri K. Panduranga Rao, Learned Counsel for the petitioner, would submit that, since the Writ Petition has been filed by the partnership firm, the facts relating to the sale deed executed by the partners in favour of Sri G. Suman, or of Sri G. Ramakanth having filed an S.A. before the DRT, are wholly irrelevant. We must express our inability to agree. As noted hereinabove, the registered lease deed dated 02.01.2013 was executed by the land owners Sri G. Ramakanth and Sri G. Srikanth in favour of the petitioner (a partnership firm of which the only two partners were Sri G. Ramanath and Sri G. Srikanth themselves). More than two years after having executed a registered lese deed on 02.01.2013, in favour of a partnership firm of which they alone were the partners, Sri G. Ramakanth and Sri G. Srikanth, along with two others, executed a registered sale deed in favour of Sri G. Suman on 30.03.2015. The fact that the partners of the petitioner-firm had executed a registered sale deed, in favour of Sri G. Suman, has also been suppressed in the writ affidavit. Sri G. Suman had, in turn, mortgaged the subject property in favour of the respondent bank, and had obtained a loan, which they defaulted in repayment. The property, referred to in the schedule of the registered sale deed, was the property mortgaged in favour of the respondent bank. In the application, filed in S.A. No.456 of 2017, Sri G. Ramakanth (deponent of this writ affidavit) admitted that the sale deed was executed in favour of Sri G. Suman only to enable the latter to obtain a loan from the bank. It is evident, therefore, that both the partners of the petitioner firm have suppressed material facts, and have thereby abused the process of this Court; and this Writ Petition has been filed only to, somehow or the other, prevent the respondent-bank from bringing the subject property to sale.

In **K.D. Sharma v. Steel Authority of India Limited**[2], the Supreme Court observed:

"………The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. **It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim**.

A prerogative remedy is not a matter of course. **While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it**………..

………..**The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play `hide and seek' or to `pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts"**……..” (emphasis supplied).

In **Prestige Lights Ltd. v. State Bank of India**[3], the Supreme Court observed:

"………..It is thus clear that though the appellant- Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. **It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.**

It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. **If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible**."

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[2] (2008) 12 SCC 481
[3] (2007) 8 SCC 449

The petitioner has not only suppressed material facts, but have also sought to play fraud on the respondent bank, surreptitiously seeking an order from this Court to restrain the respondent-bank from putting the mortgaged property to sale. The petitioner has also abused the process of this Court by filing the present Writ Petition contending that they were not put on notice by the Chief Metropolitan Magistrate, in proceedings under Section 14 of the SARFAESI Act, though they were registered lessees of the subject property when, in fact, it is the partners of the petitioner-firm who, as land owners, had not only leased the subject property to themselves, *albeit* through a partnership firm, (as they were the only two partners of the petitioner-partnership firm), but had thereafter sold the subject property to Sri G. Suman, who had mortgaged the property in favour of the respondent-bank. We see no reason, therefore, to entertain this Writ Petition.

As the petitioner has abused the process of this Court suppressing material and relevant facts, the Writ Petition is dismissed with exemplary costs of Rs.2,00,000/- (Rupees two lakhs only) which the petitioner shall pay the respondent bank within four weeks from today, failing which it is open to the respondent bank to recover the same in accordance with law. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

M. GANGA RAO, J

Date: 16.10.2017.
MRKR