

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.14777 of 2014

ORDER: (per SK,J)

This writ petition was filed assailing the possession notice dated 20.05.2014 issued by the Union Bank of India in relation to the petitioner's property which was offered as security for the loan availed by M/s.Calyx Biotech Limited. The main ground of challenge is that the bank ought not to have initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), during the pendency of O.A.No.268 of 2009 filed by it before the Debts Recovery Tribunal, Hyderabad, under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

In the light of the law laid down by the Supreme Court in M/ s.Transcore v. Union of India¹, withdrawal of a pending O.A. before the Tribunal is not a condition precedent for taking recourse to the SARFAESI Act. Therefore, the main ground of challenge in this writ petition does not survive for consideration.

That apart, it is fairly admitted by Sri M.P.Sarathi, learned counsel for the petitioner, that his client failed to comply with the conditional interim order dated 29.05.2014 passed by this Court in the present writ petition, which required her to deposit one-fourth of the notice amount in two equal instalments, the first payable within three weeks from that day and the second within a week thereafter.

¹ (2008) 1 SCC 125

This being the admitted position, we are of the opinion that the writ petition does not survive for consideration on merits. Though Sri M.P.Sarathi, learned counsel, would contend that a fraud was played upon the petitioner in the matter of creation of a guarantee, para 3 of the writ affidavit discloses that the petitioner voluntarily offered her property as security when the Managing Director of M/s. Calyx Biotech Limited approached her as a family friend and requested her cooperation. In any event, the issue of fraud cannot be determined by this Court in a writ petition filed under Article 226 of the Constitution.

The writ petition is accordingly dismissed leaving it open to the petitioner to invoke appropriate remedies available to her in law before the proper forum.

Interim order dated 29.05.2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE GUDI SEVA SHYAM PRASAD

Date:14.06.2017

GJ