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

WRIT PETITON NOS.10595 AND 10603 OF 2017

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

The proceedings under challenge in these Writ Petitions is the order passed by the Debt Recovery Appellate Tribunal in Appeal No.163 of 2013 dated 27.02.2017. The petitioner herein invoked the jurisdiction of the Debt Recovery Tribunal by filing S.A. No.133 of 2006 and 159 of 2007 wherein they sought a direction to declare the proclamation of sale notice dated 13.09.2007, and the proclamation of sale notice dated 07.11.2006, issued by the respondent-bank as illegal.

The DRT Hyderabad, in its order dated 22.03.2010, held that the notice under Rule 8(6) was mandatory before issuing a notice of proclamation of sale; as no such notice was issued, the respondents could not put the subject property to sale; the applicant was entitled to repossession of the property; and the respondent was bound to redeliver the same to the applicant. Aggrieved thereby the respondent-bank carried the matter in appeal to the DRAT, Calcutta. In its order in Appeal No.331 of 2013 dated 27.02.2017, the DRAT observed that the requirement of issuing a notice under Section 8(6) of the SARFAESI Rules, before effecting the sale, had not been complied with; and the DRT was, therefore, justified in interfering with the action of the bank in seeking to put the property to sale. The Appellate Tribunal, however, found force in the submission of the respondent-bank that the DRT could not have directed repossession of the property to the applicant without declaring the notice issued under Section 13(4), and the possession taken pursuant thereto, as illegal.

As noted herein above, it is the notice of proclamation of sale which was held by the DRT to fall foul of Rule 8(6) of SARFAESI Rules. While the action of the respondent-bank to put the subject property to sale, contrary to Rule 8(6) of the Rules, would have necessitated the sale to be set aside, re-delivery of possession of the subject property is a different matter altogether. After a notice is issued under Section 13(4) of the Act, the respondent-bank is entitled to take possession of the subject property. As has been rightly observed by the appellate Tribunal, the DRT has not even examined the validity of the notice issued by the respondent-bank under Section 13(4) of the Act; and, in the absence of any finding being recorded that the notice issued by the respondent-bank under Section 13(4) is illegal, the DRT was not justified in directing the respondent-bank to redeliver possession of the subject property to the applicant therein. The order of the DRAT, to the extent the order of the DRT in directing re-delivery of possession was set aside, does not suffer from any infirmity necessitating interference in proceedings under Article 226 of the Constitution of India.

Sri B. Chandrasen Reddy, Learned Counsel for the petitioner, would submit that, as against the loan of around 4.8 lakhs, the petitioner has already paid Rs.3.18 lakhs; a sum of around 1.7 lakhs is alone due to the respondent-bank; and the petitioner was ready and willing to deposit Rs.3 lakhs as a one time settlement for repayment of the entire dues payable to the respondent-bank. Learned Counsel would submit that, in the alternative, the petitioner be permitted to repay 50% of the amount due pending disposal of the Writ Petition; and their liability to pay the remaining 50% can be adjudicated when the Writ Petition is finally heard.

Sri Ambadipudi Satyanarayana, Learned Counsel for the respondent-bank, would submit that the demand notice issued in the year 2004 itself shows that a sum in excess of Rs.4.5 lakhs is due to the respondent-bank; more than 13 years has since elapsed; the petitioner cannot now claim that the amount due in the year 2004 should be taken as the amount now due to the respondent-bank or that the said dues should be adjusted against the amounts paid by the petitioner later; and a sum in excess of Rs.15,00,000/- was due, from the petitioner to the respondent-bank, by the end of January, 2017.

It would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to determine the actual amount due and payable by the petitioner to the respondent-bank for these are all matters which are required either to be considered by the respondent-bank, or by the DRT in the application pending before it. In the exercise of its extra-ordinary jurisdiction, under Article 226 of the Constitution of India, this Court would not take upon itself the task of rescheduling the loan extended to the petitioner by the respondent- bank, nor would it be justified in permitting the petitioner only to pay 50% of the dues during the pendency of this Writ Petition. Suffice it to make it clear that, while we find no error in the order of the DRAT, the order now passed by us shall not prelude the petitioner from approaching the respondent-bank seeking a one-time settlement of their dues.

Subject to the aforesaid observations, both the Writ Petitions fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 13.04.2017.

MRKR