THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Petition No.30418 of 2017

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri C. Raghu, learned counsel for the petitioner, and Sri M. Srikanth Reddy, learned Standing Counsel for the respondent-bank and, with their consent, the writ petition is disposed of at the stage of admission.

On the petitioner's account being declared a non-performing asset, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") was issued on 2.11.2016. Subsequently, by proceedings dated 8.3.2017, the petitioner's account was treated as regular; and the SARFAESI proceedings initiated against them earlier was withdrawn. Thereafter, a notice under Section 13(4) of the SARFAESI Act was issued to the petitioner on 29.8.2017.

The submission of Sri C. Raghu, learned counsel for the petitioner, is that, since the petitioner's account was declared regular, the respondent-bank could not have issued a notice under Section 13(4) of the SARFAESI Act without issuing a demand notice again under Section 13(2) of the SARFAESI Act; and, consequently, the impugned notice under Section 13(4) of the SARFAESI Act is illegal. On the other hand, Sri M. Srikanth Reddy, learned counsel for the respondent-bank, would submit that the petitioner again defaulted in payment of the debt due; and, consequently, their account was declared a non-performing asset on 28.5.2017.

It is however, not in dispute that after the petitioner's account was declared a non-performing asset on 28.5.2017, no notice under Section 13(2) of the SARFAESI Act was issued before the impugned proceedings dated 29.8.2017 was issued under Section 13(4) of the SARFAESI Act.

Section 13(2) of the SARFAESI Act stipulates that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of the secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as a non-performing asset, then the secured creditor may require the borrower, by notice in writing, to discharge in full his liability to the secured creditor within sixty days from the date of notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4).

While it is no doubt true that a notice under Section 13(2) of the SARFAESI Act was issued on 2.11.2016, consequent on the petitioner's account having been declared as a non-performing asset, the respondents themselves had regularized the petitioner's account by proceedings dated 8.3.2017, and had withdrawn the proceedings issued earlier under the SARFAESI Act, ie, the Section 13(2) notice. On the petitioner's account being declared a non-performing asset, subsequently on 28.5.2017, the respondent-bank was obligated to issue a notice afresh under Section 13(2) of the SARFAESI Act, and it is only thereafter could they have issued a notice under Section 13(4) of the SARFAESI Act, in case the petitioner failed to discharge the debt within 60 days from the date of receipt of the Section 13(2) notice.

As a notice under Section 13(2) of the SARFAESI Act was not issued after the petitioner's account was again declared a non-performing asset on 28.5.2017, the respondent-bank could not have issued the notice under Section 13(4) of the SARFAESI Act. The impugned proceedings dated 29.8.2017, issued under Section 13(4) of the SARFAESI Act, is set aside. It is made clear that this order shall not preclude the respondent-bank from issuing a notice afresh under Section 13(2) of the SARFAESI Act and, thereafter, taking action in accordance with law.

The Writ Petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

18th September, 2017
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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Writ Petition No.30418 of 2017

Date: 18.9.2017

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