THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.18102 of 2017

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

The relief sought for in this Writ Petition is to declare the action of the 1st respondent in classifying the petitioners' account as a non-performing asset without issuing any notice; in issuing demand notice dated 28.04.2017 and in simultaneous issuing a paper publication as illegal and arbitrary; and, for a consequential direction, to set aside the same.

On the first contention that the petitioners' account should not have been declared a non-performing asset, Sri G.Tuhin Kumar, Learned Counsel for the petitioners, would fairly state that, in the light of the judgment of the Supreme Court in **Keshavlal Khemchand & Sons Pvt. Ltd v. Union of India**[1], this contention is no longer available to the petitioners; and they are, therefore, not pressing this contention.

With regards the other contention that a demand notice and a paper public publication were simultaneously issued, it is necessary to note that a demand notice, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "SARFAESI Act" for short), was issued on 28.04.2017 informing the petitioners that, if they failed to repay a sum of Rs.3,13,83,437/- together with further interest and incidental expenses and costs, the respondent-Bank would exercise all, or any of, the rights detailed under sub-section (4)(a) and (b) of Section 13 of the SARFAESI Act; they should not

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[1] (2015) 4 SCC 770

transfer the secured asset without prior written consent of the Bank; and, any contravention of this statutory injunction, was an offence.

After the demand notice, under Section 13(2) of the SARFAESI Act, was issued on 28.04.2017, the said notice was published in Andhra Jyothi, Telugu daily on 11.05.2017. The submission, urged by Sri G.Tuhin Kumar, Learned Counsel, is that, since the notice under Section 13(2) was published in the newspaper on 11.05.2017, the notice, under Section 13(2) of the SARFAESI Act, served on the petitioner on 28.04.2017 is vitiated.

Section 13(2) enables the secured creditor to require the borrower, by notice in writing, to discharge in full his liability to the secured creditor within sixty days from the date of the notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under Section 13(4) of the Act. Section 13(2) does not require the notice also to be published in the newspaper. While Sri G.Tuhin Kumar, Learned Counsel for the petitioners, may be justified in his submission that the notice, issued under Section 13(2) of the Act, could not have been published in the newspapers, its only consequence would be that the notice, published in the newspaper on 11.05.2017, would stand vitiated. That would, however, have no bearing on the notice, under Section 13(2) of the SARFAESI Act, dated 28.04.2017 which was served on the Writ Petitioners.

Sri G.Tuhin Kumar, Learned Counsel for the petitioners, would submit that publication in the news paper had affected the reputation of the writ petitioners. Even if that be so, the remedy which the petitioners have in this regard is only to invoke the jurisdiction of a Competent Civil Court claiming damages. That would, however, not justify the conclusion that the notice under

Section 13(2) of the SARFAESI Act dated 28.04.2017, which was served on the petitioners, is illegal.

Viewed from any angle, we see no reason to interfere with the demand notice dated 28.04.2017 issued under Section 13(2) of the SARFAESI Act. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Date:06.09.2017.
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