THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 42847 of 2016

AND

WRIT PETITION No. 323 of 2017

COMMON ORDER: (per GSP, J)

W.P.No.42847 of 2016 assails the order dated 25.11.2016 passed by the Debts Recovery Tribunal (for short, the Tribunal), Hyderabad, in O.A.No.359 of 2013, whereunder and whereby the Tribunal had imposed a condition on the petitioners to deposit one-fourth of the balance amounts for setting aside the *ex parte* Judgment dated 06.07.2015 passed by Tribunal.

2. W.P.No.323 of 2017 assails the order dated 21.12.2016 passed by Tribunal, dismissing the application filed by the petitioners seeking enlargement of time for complying with the conditional order dated 25.11.2016.

3. As the parties and the subject matter of both these writ petitions being common, they are taken up for disposal by this common order.

4. The case of the petitioners, in brief, is as under:

The petitioners are owners of land admeasuring 1765.49 Sq. Yds in Survey Nos.86 and 87/A of Mamidalapadu village, Kurnool Municipal Corporation Limits, Kurnool Town. The 2nd respondent, V.C. Deluxe, is a Partnership Firm dealing in Development of Property. Respondent Nos.3 and 4 are the Managing Partners of respondent No.2-Firm. On 29.06.2009, the petitioners and the 2nd respondent-Firm entered into an Agreement for development of the property. As per Clauses 8 and 9 of the Agreement, the petitioners had exclusive rights in respect of Block-A of the property admeasuring 880.33 Sq.yds, and the 2nd respondent-Firm was granted exclusive rights in respect of Block-B admeasuring 885.16 Sq.yds.

While so, the 2nd respondent-Firm represented by respondents 3 and 4, entered into a Loan Agreement with the 1st respondent-Bank and availed credit facility to the tune of Rs.1,50,00,000/- for construction of flats. The construction of flats was completed and the flats were offered for sale to public.

The 2nd respondent-Firm defaulted in repayment of the loan availed from the 1st respondent-Bank, thereby the 1st respondent issued notices under section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act) proposing to take possession of flats bearing Nos.101, 102, 202, 301 and 302, which are situated in Block-A of the property. Some purported purchasers of the flats challenged the possession notices issued by the 1st respondent Bank, by way of filing W.P.No.29072 of 2011 before this Court. This Court, by order dated 29.12.2011, disposed of the writ petition directed the 1st respondent-Bank and the 2nd respondent-Firm to put to sale those flats which were not yet sold in favour of third parties, and appropriate the sale proceeds towards realization of the outstanding loan amount, and if there is still any outstanding balance, the same may be intimated to the petitioners so that they shall liquidate the same within 30 days from the date of receipt of such notice. The order was not challenged, thereby it attained finality.

The petitioners allege that the 1st respondent-Bank has not complied with the orders dated 29.12.2011 passed by this Court in W.P.No.29072 of 2011, and straightaway instituted O.A.No.359 of 2013 before the Tribunal by suppressing the orders passed by this Court, arraying the petitioners along with the 2nd respondent-Firm and its Managing Partners as respondents in the O.A. In the said O.A., the petitioners filed I.A.IR.No.2611 of 2014 seeking a direction to respondent No.1-Bank to comply with the orders dated 29.12.2011 passed by this Court in W.P.No.29072 of 2011. The application was returned by the Registry of the Tribunal with the objection of maintainability every time the petitioners re-presented it. The petitioners last re-presented the application on 13.03.2015 with a request to the Registry of the Tribunal to place the application before the Presiding Officer. However, the application was again returned, along with the Vakalat, on the ground that there was delay of one day in re-presenting the application.

While things stood thus with regard to the I.A.IR No.2611 of 2014, the O.A.No.359 of 2013 too underwent adjournments and was finally listed on 06.07.2015 before the Presiding Officer of the Tribunal. The petitioners state that their counsel could not attend the proceedings on 06.07.2015 before the Tribunal, and on 05.08.2015 when they checked the status of the case, they came to know that an ex parte order was passed in the O.A., in favour of respondent No.1-Bank, and a Recovery Certificate was also issued on 27.07.2015 in favour of the Bank. The 1st respondent-Bank issued Demand Notice directing the 2nd respondent-Firm and the petitioners to pay Rs.2,35,28,563/-.

The petitioners filed I.A.No.2793 of 2015 under Section 19(25), and I.A.I.R.No.2927 of 2015 under Section 22(2)(g), of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, the Recovery Act), read with Section 151 of CPC, to stay all further proceedings pursuant to the Recovery Certificate dated 27.07.2015, and to set aside the ex parte order dated 06.07.2015 passed in O.A.No.359 of 2013.

As the Tribunal was not disposing the petitioners applications, the petitioners filed W.P.No.31156 of 2016 before this Court. This Court, vide orders dated 06.10.2016 directed the Tribunal to dispose of the applications filed by the petitioners.

The Tribunal, by order dated 25.11.2016, allowed the applications filed by the petitioners subject to the condition that the petitioners deposits an amount of one-fourth of the outstanding loan balance and also file their written statement on or before 21.12.2016.

Challenging the orders dated 25.12.2016 passed by the Tribunal, insofar as the depositing of one-fourth of outstanding loan balance, the petitioners filed W.P.No.42847 of 2016. With regard to the remaining portion of the order dated 25.12.2016 pertaining to the filing of written statement, the petitioners complied with the order.

The petitioners have filed an application under Section 22(2)(h) of the Recovery Act seeking enlargement of time for depositing one-fourth of the outstanding amount due to the Bank.

The Tribunal by order dated 21.12.2016, dismissed the application. Challenging the same, the petitioners filed W.P.No.323 of 2017.

5. Heard Sri K.V. Rusheek Reddy, learned counsel for the petitioners, and Sri M. Sreekanth Reddy, learned counsel for the respondents.

6. The 1st respondent-Bank filed its counter mainly stating that the petitioners have availed the loan facilities by depositing the title deeds of the entire property as security for the loan, and that the Bank has lawfully initiated the proceedings under the SARFAESI Act. The 1st respondent contended that there is no illegality in the orders passed by the Tribunal, and there is no merit in these writ petitions and they are liable to be dismissed.

7. Learned counsel for the petitioners placed reliance on the decision rendered by the Supreme Court in **V.K. Industries and others v. M.P. Electricity Board, Rampur, Jabalpur**[1], paragraph 5 of which reads as under:

> *"5. Ordinarily, a money decree is not stayed unconditionally and the judgment-debtor would be put on terms. Even so, such conditions must be reasonable having regard to all relevant factors. Although ex parte decree was passed against the appellants, once it is set aside on the ground of non-service of suit summons the money decree did not exist for execution. It is no doubt true that in restoring a case the court may impose conditions to deposit costs or the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonable and not harshly excessive. In the impugned order the appellants are put on terms to deposit a sum of Rs.2,00,000 and to furnish a*

---

[1] (2002) 3 SCC 159

> *bank guarantee for the remaining suit claim within a period of two months. In our view these terms are onerous, harsh and unreasonable in the facts and circumstances of the case and that too even before the trial of the suit on merits."*

8. Learned counsel for the 1st respondent-Bank also placed reliance on **V.K. Industries (1 supra)**, and submitted that the Tribunal has got power to impose certain conditions and the conditions imposed by the Tribunal are reasonable and they do not require any interference.

9. As a matter of fact, the petitioners are primarily challenging the action of the 1st respondent-Bank in filing the O.A. before the Tribunal, without complying with the order 29.12.2011 passed by this Court in W.P.No.29072 of 2011.

10. The Docket Order dated 25.11.2016 passed by the Tribunal reads as under:

> *"Heard. perused the records. petition is allowed subject to filing written statement and depositing ¼ of the outstanding balance on or before 21.12.2016, failing which petition shall stand dismissed."*

11. The petition for setting aside the ex parte order was filed under Order XIII Rule 9 of CPC. The order passed by the Tribunal by imposing the condition on petitioners for depositing one-fourth of the outstanding amount appears to be on higher side. The petitioners are only seeking to set aside the ex parte order to enable them to contest the O.A. Obviously, the order passed by the Tribunal does not give any reasons for imposing condition of

deposit of 1/4th amount. Therefore, the order is liable to be modified.

12. On consideration of the rival contentions and arguments, and in the light of the decision rendered by the Supreme Court in **V.K. Industries (1 supra)**, and the challenge in writ petitions being limited to the setting aside of ex parte order and extension of time for deposit of outstanding loan amount, we are of the considered view that these writ petitions can be disposed of by modifying the order dated 25.11.2016 passed by the Tribunal by directing the petitioners to deposit Rs.10,00,000/- before the Tribunal within two weeks from the date of receipt of a copy of this order. On such deposit being made by the petitioners, the ex parte order shall be set aside.

13. In the result, W.P.No.42847 of 2016 is accordingly allowed. In view of passing of orders in W.P.No.42847 of 2016, no separate orders are required to be passed in W.P.No.323 of 2017. Accordingly, W.P.No.323 of 2017 is closed. Miscellaneous petitions, if any pending, shall stand closed. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

06th July, 2017

KSM

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 42847 of 2016

And

WRIT PETITION No. 323 of 2017

06th July, 2017

KSM