THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION Nos. 21851, 23008, 32623, 34091, 34459, 34472, 34473 of 2013; 6849, 23597 and 27010 of 2014; 42973, 42974 and 43075 of 2015; and 4174 of 2017

COMMON ORDER: (Per Justice Sanjay Kumar)

The core issue that arises for consideration in this batch of cases is whether a secured creditor who seeks to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), has the right to publish/display the photographs of borrowers in default along with their names and addresses in newspapers or other places.

Interim orders were granted by this Court in some of these cases interdicting the respondents/secured creditors from doing so.

While so, we are of the opinion that the matters do not require adjudication on merits at this stage in the light of the guidelines issued by the Reserve Bank of India on the subject.

By Circular No.DBR.CID.BC.No.17/20.16.003/2016-17 dated 29.09.2016 addressed to all the scheduled commercial banks and financial institutions, the Reserve Bank of India, while referring to the Master Circular on Wilful Defaulters dated 01.07.2015 issued by it, took note of the fact that some lending institutions had been publishing photographs of defaulters/guarantors in newspapers and issued the following instructions:

> "(i) A lending institution can consider publication of the photographs of only those borrowers, including proprietors/ partners/ directors/ guarantors of borrower firms/companies, who have been declared as wilful defaulters following the mechanism set out in the RBI

> instructions referred to above. This shall not apply to the non-whole time directors who are exempted from being considered as wilful defaulters unless the special conditions, in accordance with these instructions, are satisfied.
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> (ii) The lending institutions shall formulate a policy with the approval of their Board of Directors which clearly sets out the criteria based on which the decision to publish the photographs of a person covered in paragraph (i) above will be taken by them so that the approach is neither discriminatory nor inconsistent.
>
> The lending institutions shall not publish photographs of any other defaulting borrowers."

In the light of the aforestated instructions of the Reserve Bank of India, secured creditors under the SARFAESI Act cannot resort to publication of photographs of 'borrowers' as defined in the Act unless they have been declared wilful defaulters in terms of the Master Circular on Wilful Defaulters dated 01.07.2015. A copy of the said Master Circular is also placed on record and demonstrates that a detailed procedure has to be adhered to before declaring a borrower a wilful defaulter. Unless such procedure is followed, a borrower cannot be categorised as a wilful defaulter whereby the secured creditor would have the right to cause publication/display of his or her photographs along with relevant data, in terms of the guidelines of the Reserve Bank of India.

The writ petitions are accordingly disposed of directing the secured creditors, the respondents in these writ petitions, to scrupulously adhere to the guidelines of the Reserve Bank of India, as set out in the Circular dated 29.09.2016 and the Master Circular dated 01.07.2015. Needless to state, we have not ventured into the issue of the legal validity of the aforestated Circulars as they are presently not under challenge and the same is left open.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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GUDISEVA SHYAM PRASAD, J

19th July, 2017
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