

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 454 of 2017

and

W.P.M.P.No.42848 of 2016 in W.P.No.11356 of 2014

COMMON ORDER: (*Per VRS,J*)

The petitioners herein guaranteed the repayment of a loan secured by the 2nd respondent herein. The amount became a non-performing asset, forcing the 1st respondent-Bank to initiate proceedings way back in September, 2013.

2. As against a possession notice issued on 06.12.2013 under Section 13(4) of the SARFAESI Act, 2002, the petitioners filed an application in S.A.No.26 of 2014 before the Debts Recovery Tribunal, Hyderabad. On 12.03.2014, the Tribunal passed a compassionate order, directing the petitioners to deposit only Rs.6.00 lakhs within a period of eight weeks.

3. Challenging that order, the petitioners filed a writ petition in W.P.No.11356 of 2014. The said writ petition was dismissed for default on 03.09.2015 and an application in W.P.M.P.No.42848 of 2015 was filed for restoration.

4. Finding that the petitioners failed to comply with the interim order passed by the Tribunal on 12.03.2014 and finding that they allowed even the Writ Petition No.11356 of 2014 to be dismissed for

non-prosecution, the 1st respondent-Bank went before the District Collector and obtained an order under Section 14 for possession. Thereafter, the petitioners have come up with a fresh writ petition seeking protection.

5. Heard Mr. P. Janardhan Reddy, learned counsel for the petitioners, and Mr. B. Hanumantha Rao, learned counsel for the 1st respondent-Bank.

6. The learned counsel for the petitioners submits that the petitioners are only guarantors and that their house property, if brought to sale, will hamper the interests of their daughters, who are to be married. Therefore, he seeks six months time to make the payment.

7. But, we do not think that the request can be accepted. The conditional order passed by the Tribunal nearly about three years ago was only for payment of Rs.6.00 lakhs. We do not know how the petitioners, who could not pay Rs.6.00 lakhs in the past three years, would be able to pay the entire dues within six months, as projected by them. Every hope need not materialize into a reality. Therefore, we are of the considered view that there are no merits in the writ petition and in the restoration application. Hence, both the Writ Petition and the restoration application are dismissed. However, if the petitioners make a representation to the 1st respondent-Bank

establishing their *bona fides* by making the payment, the Bank may consider their request for postponement of taking possession.

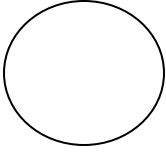
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

5th January, 2017
cbs





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