

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.3951 of 2017

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

The jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order passed by the Debts Recovery Tribunal, Visakhapatnam in S.A. No. 122 of 2016 dated 2.1.2017. Against the action taken by the respondent-bank under Section 13(4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), the petitioner availed their statutory remedy under Section 17 thereof. The Debts Recovery Tribunal, Visakhapatnam dismissed their application by its order dated 02.01.2017.

Sri G. Vasantha Rayudu, learned counsel for the petitioner, would submit that, though several contentions were urged before the Tribunal, none of them were considered; the petitioner was entitled for adjustment of the subsidy at the inception itself, and not at the fag end of the period stipulated for repayment of the loan; if the said amount had been adjusted, the loan would then have fallen within the ambit of Section 31(J) of the SARFAESI Act; consequently, the account of the petitioner would not have become a non-performing asset; and, though all these contentions were raised before the Tribunal, the impugned order was passed without adjudicating the contentions urged by the petitioner.

Against the order passed by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the petitioner has a right of appeal to the Appellate Tribunal under Section 18 of the Act. Unlike in judicial review proceedings where the scope of enquiry is extremely limited, the scope of an appeal, under Section 18 of the SARFAESI Act, is much wider and both questions of fact and law can be examined by the Appellate Tribunal.

Sri G. Vasantha Rayudu, learned counsel for the petitioner, does not dispute the fact that the contentions now urged before us can also be urged before the Appellate Tribunal under Section 18 of the Act. His grievance is that, since the order does not contain reasons, this Court should interfere.

The jurisdiction, which this Court exercises under Article 226 of the Constitution of India, is discretionary and one of the grounds, on which this Court would refrain from exercising its discretion to entertain the writ petition, is if the petitioner has an effective and efficacious alternative remedy. As the petitioner has an effective alternate remedy under Section 18 of the SARFAESI Act, we see no reason to entertain the writ petition. Leaving it open to the petitioner to avail their statutory appellate remedy under Section 18 of the Act, the writ petition fails and is, accordingly, dismissed. Needless to state that, in case the petitioner avails their appellate remedy under Section 18 of the Act, the Appellate Tribunal shall examine the petitioner's contentions on its merits uninfluenced by any observations made by us in this order.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

6th February, 2017
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