HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

W.A.No.1880 of 2017 and W.P.No.29460 of 2017

COMMON JUDGMENT: (per Hon'ble the Acting Chief Justice)

While we would, ordinarily, not have exercised jurisdiction, under Clause 15 of the Letters Patent, to interfere with the ad-interim order passed by the learned single Judge, since the appellant can always file a petition to vacate the ad-interim order, the order under appeal, in the present case, necessitate our interference.

The 1st respondent-writ petitioner borrowed a sum of Rs.12,76,00,000/- in 2011. While they claim to have paid more than Rs.8,00,00,000/- till date towards the principal, the outstanding amount due as on April, 2017, inclusive of interest, exceeded Rs.16,32,00,000/-. Contending that the Granite Industry, all over the world, is facing a slump resulting in their inability to repay their debt, the respondent-writ petitioner questioned the action of the A.P. State Financial Corporation (for brevity "the Corporation") in issuing an advertisement on 21.08.2017 inviting bids for sale of their property. The learned counsel, appearing on behalf of the appellant-Corporation, had submitted before the learned single Judge that the two cheques, issued by the petitioner, had already bounced; as the cheques issued by the writ-petitioner were not honoured, it was evident that they were unable to pay the amount; and, therefore, initiation of the impugned proceedings could not be faulted.

On the submission of the learned Senior Counsel, appearing on behalf of the writ petitioner, that a sum of Rs.8,00,00,000/-, from out of the total loan amount of Rs.12,76,00,000/-, was paid, the learned Single Judge granted ad-interim stay, as prayed for, on condition that the petitioner paid Rs.1,50,00,000/- within a period of eight weeks from the date of passing the said order and, in default, it was open to the respondent-Corporation to proceed further, without any further orders from the Court.

Sri Y.N. Vivekanand, Learned counsel for the appellants (respondent Nos.2 to 5 in the writ petition), would submit that the appellant-Corporation had earlier seized the petitioner's Unit; the petitioner had paid a sum of Rs.20 lakhs, and had issued two cheques for a total sum of Rupees Two Crores in favour of the appellants; consequently the earlier seizure order was lifted by the appellant-Corporation; on the said cheques for Rupees Two Crores being dishonoured on presentation, the appellant-Corporation had issued a Recall-cum-Sale Notice on 10.05.2017; they had thereafter issued a seizure order dated 21.06.2017, questioning which the petitioner had filed a writ petition in which no interim order was passed; thereafter an advertisement was issued on

21.08.2017 inviting bids for sale of the subject property; and despite these facts, having been brought to the notice of the learned Single Judge, the interim order under appeal was passed permitting the Writ petitioner to merely pay Rs.1.50 crores, that too over a period of eight weeks, though it was brought to the notice of the learned Single Judge that the cheques for Rs.Two Crores, submitted by the petitioner more than six months ago in March, 2017, had been dishonoured on presentation.

On the other hand Sri A. Sudarshan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that this Court would, ordinarily, not entertain an intra-Court appeal, under Clause 15 of the Letters Patent, against exercise of discretion by the learned single Judge to grant a conditional interim order; the Learned Single Judge has, in the present case, called upon the petitioner to pay Rs.1.50 crores within eight weeks, with a default clause that their failure, to make payment, would enable the appellant-Corporation to proceed further in accordance with law; the petitioner's endeavour is to revive the Unit; the very purpose and object of the State Finance Corporation Act is to assist in establishing industrial Units, and to promote business activity; arbitrary and selective recovery of loans would defeat the very object of the State Financial Corporation Act; it is not as if the petitioner has not repaid any amount to the appellant-Corporation; it is not in dispute that a sum, in excess of Rs.Eight Crores, has already been repaid to the appellant-Corporation by the respondent-writ petitioner; even in case of chronic defaulters, the Supreme Court, in **Haryana Financial Corporation v. Jagdamba Oil Mills**[1], had granted six months' time for the borrowers to repay the amounts due; and in such circumstances this Court should exercise restraint and relegate the appellants to the remedy of filing an application to vacate the interim order passed by the Learned Single Judge.

It has not been disputed before us that cheques for Rs.Two Crores, issued by the 1st respondent-writ petitioner to the appellant-Corporation in March, 2017, was dishonoured by the bank on presentation. This fact does not even appear to have been stated by the petitioner in the affidavit filed by them in support of the Writ Petition. Though this fact was brought to his notice by the Learned Counsel for the appellant, the learned Single Judge exercised his discretion to grant interim stay on condition that the 1st respondent-writ petitioner paid Rs.1.50 crores within eight weeks, which is far less than even the Rs.Two Crores which the petitioner had sought to pay in March, 2017, by way of two cheques which were dishonoured on presentation.

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[1] (2002) 3 SCC 496

While the submission of Sri A. Sudarshan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioner, that the appellants should aid in revival of Sick Units, and not to force them to close down, has considerable force, the manner and mode of regulating sanction of loans, and its recovery, is for the appellant-Corporation, (a statutory body created and established under the State Financial Corporations Act), to decide. In judicial review proceedings, under Article 226 of the Constitution of India, this Court is concerned mainly with the decision making process, and not the decision itself; and this Court would, therefore, not take upon itself the task of examining the feasibility of revival of the respondent-writ petitioner's Unit as it lacks expertise in these matters. No complaint of procedural irregularity, having been committed by the appellant-Corporation, has been brought to our notice. While no exception can be taken to the submission of Sri A. Sudarshan Reddy, learned Senior Counsel, that the State financial Corporation should examine the feasibility of revival of Units to which they have extended loans, these are all matters which the appellant-Corporation should decide, and not for this Court to direct.

Sri A. Sudarshan Reddy, learned Senior Counsel, would draw our attention to para-10 of the writ affidavit, wherein the 1st respondent-writ petitioner has stated that they should be permitted to pay the outstanding amount of Rs.1.50 crores during the year 2017-18 in instalments, so as to enable them to identify new Directors, and other Solicitors, to run their Unit smoothly. Sri Y.N. Vivekanand, learned Standing counsel for the appellant-Corporation, would contend, not without justification, that the affidavit, filed in support of the writ petition, makes no mention of the manner in which the 1st respondent-writ petitioner proposes to revive the Unit, and how they intend to bring in the required funds for its revival, While neither by the aforesaid averments, nor for that matter anywhere else in the writ affidavit, has the respondent-writ petitioner stated how they intend to revive their Unit, these are matters which they should furnish to the appellant-Corporation, to enable the latter to decide whether or not their debt should be rescheduled. Neither would this Court take upon itself the task of examining whether the proposal, to be submitted by the writ-petitioner to the appellant-Corporation, would result in its revival, nor would it examine whether, on the basis of such a proposal, the debt due from the 1st respondent-writ petitioner to the appellant-Corporation should be rescheduled.

It is no doubt true that the Supreme Court, in **Jagdamba Oil Mills**[1], had granted the borrower therein (who was a chronic defaulter and had not paid even a part of the loan amount), six months time to repay the total amount due, from the date they were intimated by the appellant-Corporation of the total debt due from them. We must, however, bear in mind that the Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, in writ proceedings, is circumscribed by limitations which cannot be transgressed on the whim or subjective sense of justice varying from Judge to Judge. (**State of Punjab v. Surinder Kumar**[2]; **Chairman, Grid Corpn. Of Orissa Ltd (Gridco) v. Sukamani Das**[3]). The power conferred on the High Court, under Article 226 of the Constitution of India, is not on par with the constitutional jurisdiction conferred upon the Supreme Court under Article 142 of the Constitution of India. (**State of U.P. v. Johri Mal**[4]; **State of H.P. v. A parent of a Student of Medical College**[5] and **Asif Hameed v. State of J&K**[6]). The power conferred under Article 226 of the Constitution is not akin to the power conferred under Article 142 of the Constitution. (**Johri Mal**[4]; **Guruvayoor Devaswom Managing Committee v. C.K. Rajan**[7]; **B.C. Chaturvedi v. Union of India**[8]). Exercise of the extraordinary jurisdiction, constitutionally conferred on the Supreme Court

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[2] (1992) 1 SCC 489
[3] (1999) 7 SCC 298
[4] (2004) 4 SCC 714
[5] (1985) 3 SCC 169
[6] 1989 Supp (2) SCC 364
[7] (2003) 7 SCC 546
[8] (1995) 6 SCC 749

under Article 142(1) of the Constitution, can be of no guidance on the scope of Article 226. (**State of Haryana v. Naresh Kumar Bali**[9]; **State of H.P. v. Mahendra Pal**[10]). As no such power is available to this Court, while exercising jurisdiction under Article 226 of the Constitution of India, it would not be open to us to issue directions, similar to those in **Jagadamba Oil Mills**[1], or to direct either that the respondent-writ petitioners should be permitted to repay their debt in instalments or that the appellant-Corporation should reschedule the debt.

We consider it appropriate, in such circumstances, to permit the 1st respondent-writ petitioner to submit a detailed proposal to the appellant-Corporation, and satisfy them of the manner in which they expect to revive their Unit, within three weeks from today. The appellant-Corporation shall examine the proposal, take a considered decision on whether or not the said proposal merits acceptance, and communicate their decision to the 1st respondent-writ petitioner within four weeks thereafter. While the order of seizure, which continues to remain in force as on date, shall continue, the appellant-Corporation shall defer the auction till they pass an order, and communicate their decision to the 1st respondent-writ petitioner. Needless to state that, in case the 1st respondent-writ petitioner does not submit the proposal, as directed hereinabove, within three weeks from today, it is open to the

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[9] (1994) 4 SCC 448
[10] 1995 Supp (2) SCC 731

appellant-Corporation to proceed and take action thereafter in accordance with law.

Sri A. Sudarshan Reddy, learned Senior Counsel, would submit that, in view of the order passed by us in the present writ appeal, the cause in the writ petition no longer survives necessitating any further adjudication. The order under appeal is modified to the extent indicated above, and both the Writ Petition and the Writ Appeal are disposed of accordingly. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the Writ Appeal and the Writ Petition shall stand closed.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

13.12.2017.
Msr

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