IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6006 of 2018

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1. M/s Rambali Cold Storage Private Ltd. through its Director Sri Ramashrya Singh Yadav son of Sri Rambali Yadav registered office at village - Mocharim P.S. Bodhgaya, District - Gaya.
2. Smt. Babita Kumari W/o Sri Ramashray Singh Yadav resident of village - Mocharim, P.S. Bodhgaya, District - Gaya.

.... Petitioners

Versus

1. Central Bank of India, Bodhgaya Branch Bodhgaya, P.S. Bodhgaya, District - Gaya through its Branch Manager.
2. The Authorized Officer-cum-Chief Manager Central Bank of India, Bodhgaya Branch Bodhgaya, District - Gaya.

.... Respondents

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Appearance :

For the Petitioners : Mr. Amarnath Singh, Sr. Advocate
Mr. Ashok Kumar, Advocate

For the Respondents : Mr. Ajay Kumar Sinha,
Mr. Ajit Kumar Sinha,
Ms. Manini Jaiswal, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 02-05-2018

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. The present writ petition has been filed for quashing the order vide letter no. Br/Bodhgaya/17-18/28 dated 15.03.2018 (Annexure-2) issued by the respondent-Central Bank of India requiring the petitioners to vacate the premises by 15.03.2018 after which the Bank may put its lock on the said property on any day after 25.03.2018 without any further notice to them; and for connected reliefs.

3. The short facts, according to the petitioners, are that the petitioner no. 1 is a private limited company carrying on business

of cold storage and petitioner no. 2 is its Managing Director. A term loan facility of Rs. 222 lakhs was sanctioned by the Bank on 17/18.07.2009 and the petitioners duly executed various loan/ security/guarantee documents. Further cash credit facility of Rs. 125 lakhs was sanctioned on 20.02.2010 for which the requisite documents were also executed. The account of the petitioners was declared as NPA on 28.01.2012. The Bank preferred O.A. No. 260 of 2017 which was disposed of by the Debts Recovery Tribunal, Patna (the "DRT") by its judgment dated 27.02.2018, determining the debt with costs and charges, pursuant to which a recovery certificate for Rs. 6,37,50,294/- was issued by the DRT the same day, namely, 27.02.2018. The parties were directed to appear before the DRT on 30.04.2018.

4. Learned counsel for the petitioners submits that the impugned letter of the respondent-Bank dated 15.03.2018 issued under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "SARFAESI Act") requiring the petitioners to vacate the subject property is wholly arbitrary and illegal in view of the determination already made and recovery certificate issued under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 (for short, "RDB Act"). It is further stated that the petitioners are ready to deposit all the outstanding amount in installments but the DRT has failed to consider the petitioners' request for restructuring the loan amount. It is further

stated that a large quantity of vegetables etc., are lying in the cold storage of the petitioners as enumerated in paragraph 3 of the supplementary affidavit.

5. Learned counsel for the petitioners has relied upon Sections 5-A, 13(1) and 13(10) of the SARFAESI Act as well as Sections 19(1) proviso, 19(22-A), 19(23), 19(25) and 19(26) of the RDB Act to submit that the steps for recovery under the provisions of the SARFAESI Act cannot be pursued by the Bank after determination of the amount recoverable under the RDB Act. Reliance is placed on the decision of the Apex Court in *Allahabad Bank Vs. Canara Bank and another, AIR 2000 SC 1535.*

6. Learned counsel for the respondent-Bank opposes the writ petition and submits that there is no infirmity in continuance of the proceedings under SARFAESI Act, notwithstanding determination of the debt recoverable and issuance of certificate under the RDB Act. It is pointed out that the proceedings under SARFAESI Act were initiated much earlier and a notice under Section 13(2) thereof was issued on 05.12.2015 and measures were also taken by issuance of notice under Section 13(4) on 27.07.2016. The possession notice was published in two newspapers on 01.08.2016. Valuation of the property was then obtained on 17.08.2016. During pendency of the SARFAESI proceeding, O.A. No. 260 of 2017 was filed by the Bank before the Debts Recovery Tribunal, Patna on 26.04.2017, after which e-auction notice dated

28.05.2017 was issued, affixed and published in terms of the SARFAESI Act fixing 30.06.2017 as the date of auction. The petitioners preferred SARFAESI Application in S.A. No. 107 of 2017 before the DRT against the e-auction notice dated 28.05.2017 which was, however, dismissed by judgment dated 12.09.2017, inter alia, finding no defect in the possession notice. It was noticed that the e-auction sale could not take place and therefore the e-auction sale notice had become infructuous. It is therefore submitted that the impugned letter dated 15.03.2018 under the SARFAESI Act requiring the petitioners to vacate the premises is nothing but a step in furtherance of an attempt to recover its outstanding dues out of the mortgaged property through auction sale in pursuance of the possession notice which had already been found to be valid by the DRT in S.A. No. 107 of 2017 as stated above. It is also submitted that the scope and power under the two enactments are different and there is no inconsistency in resorting to recovery under either enactment. The Bank has taken recourse to recovery through auction sale of the mortgaged property of the petitioners while the scope of recovery under RDB Act is wider to extend to other properties as well. To the extent that recovery is effected out of the mortgaged property under SARFAESI proceeding, the debt determined under RDB Act would stand reduced. Reliance is placed on a decision of the Hon'ble Supreme court in *Transcore Vs. Union of India & Another, (2008) 1 SCC 125* and a Division Bench decision of this Court in *LPA No.*

1743 of 2012 (The State Bank of India Vs. Purnea Cold Storage & Anr.).

7. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds the writ petition to be devoid of merit.

8. Reliance placed by learned counsel for the petitioners on the provisions of Section 5-A(4) is not relevant in the instant case. This is relatable to an asset reconstruction company which acquires the financial assets of a borrower, which is not the case herein. The provisions of Section 13(1), rather than aid the contention of the petitioners, specifically provides for enforcement of security interest by the secured creditor, in this case the Bank, without intervention of the Court or Tribunal. So also, Section 13(10) supports the contention of the Bank to the effect that if the balance amount of the dues of the borrower remains unsatisfied after sale of the secured assets, the same may be recovered through the proceeding before the Debts Recovery Tribunal. The decision in Allahabad Bank vs. Canara Bank & anr. was rendered on 10.04.2000 in the context of the Company Court under Section 442 read with Section 537 or Section 446 of the Companies Act, 1956 in relation to the provisions of the RDB Act, 1993. It is significant to note that at the time of delivery of the judgment, the SARFAESI Act had not been enacted. The decision relied upon is thus completely distinguishable inasmuch as the scope of the powers given to the Bank for direct recovery are completely different from the powers of the

Company Court. There can be no dispute with the proposition that RDB Act does provide a complete code for recovery as contended by the petitioners. However, there is nothing in the provisions pointed out to suggest that once the debt is determined under RDB Act, continuance of SARFAESI proceedings is prohibited or automatically terminates.

9. This Court is in agreement with the submissions made on behalf of the respondent-Bank.

10. The Apex Court in in paragraphs 68 and 69 of Transcore's case (supra) has held as follows —

> *"68. The object behind introducing the first proviso and the third proviso to Section 19(1) of the DRT Act is to align the provisions of DRT Act, the NPA Act and Order XXIII CPC. Let us assume for the sake of argument, that an O.A. is filed in the DRT for recovery of an amount on a term loan, on credit facility and on hypothecation account. After filing of O.A., on account of non disposal of the O.A. by the tribunal due to heavy backlog, the bank finds that one of the three accounts has become sub-standard/ loss, in such a case the bank can invoke the NPA Act with or without the permission of the DRT. One cannot lose sight of the fact that even an application for withdrawal/ leave takes time for its disposal. As stated above, with inflation in the economy, value of the pledged property/ asset depreciate on day to day basis. If the borrower does not provide additional asset and the value of the asset pledged keeps on falling then to that extent the account becomes non-performing. Therefore, the*

> *bank/ FI is required to move under NPA Act expeditiously by taking one of the measures by Section 13(4) of the NPA Act. Moreover, Order XXIII CPC is an exception to the common law principle of non-suit, hence the proviso to Section 19(1) became a necessity.*
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> *69. For the above reasons, we hold that withdrawal of the O.A. pending before the DRT under the DRT Act is not a pre-condition for taking recourse to NPA Act. It is for the bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw. We do not wish to spell out those circumstances because the said first proviso to Section 19(1) is an enabling provision, which provision may deal with myriad circumstances which we do not wish to spell out herein."*

11. It therefore becomes clear that proceedings under the two enactments can be pursued side by side and even if the bank chose not to withdraw its application under RDB Act, the Bank would not be precluded from pursuing direct recovery proceedings under the SARFAESI Act.

12. A Division Bench of this Court In LPA No. 1743 of 2012 (*The State Bank of India Vs. M/s Purnea Cold Storage & anr.),* having regard to the decision in Tanscore's case (supra) observed as follows —

> *"We are of the opinion that the learned single Judge has rightly held that both the Acts are complementary to each other and that there is no inherent or implied*

inconsistency between the remedies under the two Acts. However, having held that both remedies are complementary to each other and there was no inherent or implied inconsistency in either of the enactments, the learned single Judge has erred in holding that the provisions contained in the Act of 2002 has an overriding effect over the Act of 1993. Once the Act of 2002 is invoked, the remedy under the Act of 1993 cannot be availed of except for the remainder of the dues which cannot be satisfied by sale of the secured assets.

Section 35 of the Act of 2002 does give the Act of 2002 an overriding effect over any other law notwithstanding anything inconsistent contained in such other law. In other words, the Act of 2002 would have overriding effect over the provisions contained in the Act of 1993, had the provisions contained in the 9 / 10 Act of 1993 been inconsistent with the provisions contained in the Act of 2002. It is by now well settled and accepted universally that the Act of 2002 is complementary to the Act of 1993 and has been enacted with a view to providing a speedier remedy to the secured creditors. Having held that there was no inherent or implied inconsistency between the two enactments, the learned single Judge has erred in invoking Section 35 of the Act of 2002 to stay the proceeding before the Tribunal. We also agree with the Delhi High Court that there is no embargo in either of the Acts restraining the secured creditor from pursuing both the remedies simultaneously or one after the other. The reading of such an embargo would *frustrate the very soul and very purpose of both the enactments.*

There is nothing wrong about the Bank in approaching the Tribunal within the period of limitation. No ulterior motive can be imputed against the Bank for approaching the Tribunal within the period of limitation …"

13. From the above it is abundantly clear that the respondent Bank is at liberty to take steps under both the enactments simultaneously at its option. If the auction sale of the property under SARFEASI Act succeeds and any amount is recovered, DRT/Recovery Officer can be approached in this regard and the amount recoverable under the recovery certificate would accordingly be modified to operate only for the balance amount of the debt remaining outstanding against the petitioners.

14. Finding no infirmity in the impugned letter dated 15.03.2018 (Annexure-2), no relief can be granted to the petitioners, save and except granting liberty to them to approach the respondent-Bank for grant of some time to vacate the premises and remove the stock of vegetables, if such stocks are not hypothecated. In such event, the Bank would grant time for the purpose until 19.05.2018 in order to provide a period of 30 days to the petitioners from the date of issuance of the impugned letter dated 19.03.2018, after allowance being given for the period during which the writ petition remained pending before

this Court.

15. The writ petition stands dismissed with the above observations and directions.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03.05.2018
Transmission Date	N.A.