IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION NO.20464 OF 2017

Between:

Meragani Appa Rao ... Petitioner

and

Deputy General Manager-cum-
Authorised Officer, IDBI Bank,
Bhimavaram. ... Respondent

DATE OF JUDGMENT PRONOUNCEMENT: 15th FEBRUARY, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

P.KESHAVA RAO, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

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<Gist:

>Head Note:

! Counsel for petitioner : Sri C.Ramachandra Raju

^Counsel for respondent : Sri B.Harinath Rao

? CASES REFERRED:

1. W.P.No.39673 of 2015 decided on 06.07.2017.

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.20464 OF 2017

O R D ER
(*per* Hon'ble Sri Justice Sanjay Kumar)

The petitioner assails the action of the IDBI Bank (*hereinafter*, 'the bank') in cancelling the offer of a One Time Settlement by its letter dated 23.06.2016 and in issuing sale notice dated 22.05.2017, followed by publication of the e-auction sale dated 07.06.2017, proposing to sell the petitioner's mortgaged properties on 28.06.2017. He also seeks a consequential direction to the bank to grant him reasonable time for payment of the balance amount under the One Time Settlement as per the guidelines of the Reserve Bank of India.

By order dated 27.06.2017, this Court took note of the fact that the auction sale of the petitioner's properties was scheduled to be held on the next day and permitted the bank to proceed with the said sale but in the event it materialised, the bank was directed to receive only 25% of the bid amount and was restrained from confirming the sale or taking any further action until the next hearing. This order was not extended thereafter. In any event, we are informed that the sale did not materialize on 28.06.2017 for want of bidders.

In his writ affidavit, the petitioner stated as follows: He was the proprietor of M/s.Jayalakshmi Traders, a rice mill at Bheemavaram in West Godavari District. He borrowed a sum of Rs.5.00 crore from the bank in the year 2009 towards working capital for this rice mill. He repaid a sum of Rs.3.30 crore to the bank by 19.03.2014. However, as he sustained loss in the running of the mill due to adverse market conditions and other reasons, he requested the bank for a One Time Settlement in the year 2014. The bank accepted his plea *vide* letter dated 01.03.2016 requiring him to pay Rs.4.32 crore of which, Rs.48.00 lakh was to be paid upfront and the remaining amount of Rs.3.84 crore was to be paid by March, 2016 in single or multiple tranches. He paid a sum of Rs.1.12 crore immediately, which was admitted by the bank, and thereafter, he paid Rs.10.00 lakh on 14.06.2016. According to him, this payment was ignored by the bank. His grievance is that reasonable time was not granted to him for payment of the amount due under the One Time Settlement. He addressed letter dated 11.05.2016 to the bank requesting extension of time for payment of the balance but, without considering the same, the bank replied *vide* letter dated 25.05.2016 threatening to cancel the One Time Settlement if he did not pay the full amount by the end of May, 2016. Thereafter, by letter dated 23.06.2016, the bank informed him that the One Time Settlement offer stood cancelled. He asserted that no show-cause notice was issued to him prior thereto and without granting him reasonable time, as per the guidelines of the Reserve Bank of India, which mandate that a year's time should be given for clearing the amounts due under a One Time Settlement, the bank cancelled the offer. He made a representation to the bank on 25.04.2017 seeking six months time to pay the balance amount due under the One Time Settlement, but the bank advised him under letter dated 19.05.2017 to apply for a fresh One Time Settlement. Thereafter, the bank straightaway issued a sale notice on 22.05.2017 to him proposing to put his mortgaged properties to sale under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), followed by publication of the e-auction sale notice dated 07.06.2017.

His further grievance is that no fresh demand notice under Section 13(2) of the SARFAESI Act was issued to him prior to the sale notice dated 22.05.2017 and thereafter, the bank published the auction notice dated 07.06.2017. As the demand notice issued earlier by the bank was in the year 2014 before the sanction of the One Time Settlement, the petitioner asserted that the bank necessarily had to issue a fresh demand notice under Section 13(2) of the SARFAESI Act, as the earlier notice was deemed to have lapsed due to the intervention of the One Time Settlement proceedings. He claimed that he was deprived of the right to make a representation or raise objections under Section 13(3A) of the SARFAESI Act owing to the bank not issuing him a fresh demand notice under Section 13(2) of the SARFAESI Act. He further stated that the bank failed to obtain valuation of his properties from an approved valuer and fixed the reserve price arbitrarily. He asserted that no notice had been given to him for fixation of the reserve price. He pointed out that in the year 2014, before grant of the One Time Settlement, the reserve price fixed for Item No.1 of his properties was Rs.5.32 crore but in the auction notice dated 07.06.2017, the reserve price for the same property was fixed at Rs.4.45 crore. As the values of properties would normally escalate, the petitioner asserted that fixing of the reserve price for the property at a much lesser value than was fixed three years ago manifests that the bank did not obtain valuation of the property from an approved valuer. He pointed out that the bank did not fix a reserve price for Item No.2 of his properties in the impugned auction notice dated 07.06.2017 and asserted that the bank could not sell the property without fixing the reserve price therefor.

In its counter affidavit, the bank, speaking through the Deputy General Manager of its Rajahmundry Branch, East Godavari District, stated as follows: The petitioner, being the proprietor of M/s.Jayalakshmi Traders, a rice mill at Bheemavaram, approached the bank for availing cash credit facilities for his business purposes and the bank sanctioned Rs.3.50 crore *vide* sanction letter dated 18.04.2009. The plant and machinery of the petitioner's rice mill was hypothecated with the bank and an exclusive first charge was created on its entire current assets and the properties mortgaged by it. A personal guarantee was also offered by the petitioner in his individual capacity. In the year 2010, the bank enhanced the loan facilities to Rs.4.50 crore *vide* sanction letter dated 18.03.2010 and again, in the year 2011 to Rs.5.00 crore *vide* sanction letter dated 01.06.2011. The loan account was renewed *vide* sanction letter dated 11.08.2012 with proper documentation. Default having been committed thereafter in repayment of the interest on this loan account, the same was declared a NPA as per the guidelines of the Reserve Bank of India. The bank issued recall notice dated 06.01.2014 calling upon the petitioner to clear the due amount of Rs.5,34,23,827/- as on 01.01.2014, along with interest accrued thereon, within fifteen days. Having received the letter, the petitioner did not come forward. The bank thereupon issued guarantee invocation notice dated 29.01.2014 to the petitioner calling upon him to clear his dues, but the petitioner did not clear the said dues. The bank also issued a demand notice under Section 13(2) of the SARFAESI Act on 29.01.2014 to clear the outstanding dues of Rs.5,34,23,827/- as on 01.01.2014, together with further interest. The petitioner thereupon submitted letter dated 26.02.2014 putting forth a One Time Settlement proposal but the same was rejected by the bank by letter dated 08.03.2014.

As the petitioner failed to pay the dues even thereafter, the bank issued possession notice dated 28.11.2014 under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'). The same was published in Sakshi Telugu Daily and Indian Express English Daily newspapers on 30.11.2014. An order under Section 14 of the SARFAESI Act was secured from the District Magistrate, West Godavari District, in January, 2015, and pursuant thereto, the Tahsildar, Bheemavaram, delivered the physical possession of the petitioner's mortgaged properties to the bank under panchanama dated 20.02.2015. Sale Notice dated 02.03.2015 was then issued by the bank to the petitioner but he did not come forward to clear the dues within thirty days therefrom. The bank published e-auction notice dated 05.04.2015 proposing to put the petitioner's mortgaged properties to sale on 06.05.2015. Challenging this notice, the petitioner filed S.A.No.129 of 2015 before the Debts Recovery Tribunal, Visakhapatnam. By order dated 12.05.2015 passed in I.A.No.306 of 2015 filed by the petitioner in the said S.A. for interim relief, the Tribunal granted stay of all further proceedings subject to the petitioner depositing 10% of the outstanding dues within four weeks from the date of the order and another 10% within four weeks thereafter. The petitioner however failed to comply with this conditional order and the bank proceeded with the auction, but it failed for want of bidders. The second sale held by the bank with a 10% reduction in reserve price on 19.08.2015 also failed as there were no bids.

At that stage, the petitioner approached the bank again seeking a One Time Settlement *vide* letter dated 02.09.2015. Having considered the same, the bank approved the One Time Settlement for a sum of Rs.4.32 crore, *vide* letter 01.03.2016, stipulating that the petitioner should pay Rs.48.00 lakh upfront at the time of acceptance of the letter of approval and the remaining amount of Rs.3.84 crore by March, 2016, in single or multiple tranches. One of the terms in the letter dated 01.03.2016 was that in the event the petitioner failed to honour the One Time Settlement, the bank would have the right to continue the SARFAESI action already initiated. Having received the said letter and accepted the terms and conditions thereof, the petitioner only paid a sum of Rs.1.12 crore by the end of March, 2016, and did not make any payments thereafter despite repeated requests. He submitted letter dated 11.05.2016 requesting some more time to make the balance payment. The bank replied *vide* letter dated 25.05.2016 requesting him to pay the balance amount along with further interest by 31.05.2016, otherwise it would be constrained to revoke the One Time Settlement. However, he did not make the payment by the said date and in consequence, the bank revoked the One Time Settlement and intimated the same to him *vide* letter dated 23.06.2016. Having received the said letter, the petitioner neither paid any amount nor approached the bank and only after ten months, he addressed letter dated 25.04.2017 requesting six months time. Reply dated 19.05.2017 was issued by the bank, whereunder it rejected the petitioner's request for grant of six months time but informed him that he could submit a fresh One Time Settlement proposal along with upfront payment.

As the bank was not fettered from proceeding further under the SARFAESI Act, sale notice dated 22.05.2017 was issued to the petitioner under Rule 8(6) of the Rules of 2002 giving him thirty days time to clear the dues. The auction notice dated 07.06.2017 under Rule 9(1) of the Rules of 2002 was published on 08.06.2017, whereunder the sale was scheduled to be held on 28.06.2017. The bank stated that as it had already issued demand notice dated 29.01.2014 under Section 13(2) of the SARFAESI Act and as the petitioner had failed to raise any objections thereto but only sought a One Time Settlement under his letter dated 26.02.2014 which had been rejected, the said demand notice would not lapse by mere intervention of the One Time Settlement proceedings as one of the terms thereof was that it was without prejudice to the right of the bank to continue with the SARFAESI action already initiated. The bank therefore asserted that it was under no obligation to issue a fresh notice under Section 13(2) of the SARFAESI Act.

As regards the petitioner's allegations as to the valuation of the property and fixation of the reserve price, the bank stated that it had obtained valuation of the property from an approved valuer of the bank. The bank stated that this valuation was obtained from an approved valuer on 26.09.2016 and it fixed the reserve price accordingly, As per the bank's policy, the proposed auction was well within one year from the date of obtaining the valuation. The bank therefore stated that no cause was made out for interference and prayed for dismissal of the writ petition.

No reply affidavit was filed by the petitioner rebutting the averments made in the aforestated counter affidavit.

Sri C.Ramachandra Raju, learned counsel for the petitioner, would strenuously contend that the bank acted illegally all through its dealings with his client. He would submit that sufficient time was not given to the petitioner in terms of the Reserve Bank of India guidelines for making the payment due under the One Time Settlement. He would assert that a year's time had to be given as per these guidelines. He would further point out that no show-cause notice was issued to the petitioner prior to cancellation of the One Time Settlement offered under the letter dated 01.03.2016 and therefore, there is a clear violation of the principles of natural justice. He would point out that the payment of Rs.10.00 lakh by the petitioner pursuant to such One Time Settlement offer was ignored, clearly indicating the lack of application of mind by the bank. He would assert that the earlier demand notice under Section 13(2) of the SARFAESI Act is deemed to have lapsed by virtue of the One Time Settlement proceedings which intervened and therefore, the bank was legally bound to start measures afresh under the SARFAESI Act from scratch, by issuing a demand notice under Section 13(2) thereof.

Per contra, Sri B.Harinath Rao, learned counsel for the bank, would point out that the One Time Settlement was approved by the bank subject to terms and conditions and one such term was that the sanction of the One Time Settlement by the bank was without prejudice to the SARFAESI action already initiated by it. He would therefore assert that mere intervention of the One Time Settlement, which failed in any event, would not set at naught the proceedings already initiated under the SARFAESI Act and therefore, the bank was entitled to proceed on the strength of the demand notice issued on 29.01.2014. Thus, there was no need for it to start the proceedings afresh. Learned counsel would further point out that though the time stipulation, as per the letter dated 01.03.2016, was by March, 2016, the bank extended time for making the full payment up to the end of May, 2016, but the petitioner did not choose to avail the same. Learned counsel would point out that even as on date, the petitioner failed to make further payments after paying the sum of Rs.10.00 lakh. He would further submit that this amount would be given due credit by the bank and that mere non-mentioning of the receipt of this amount does not vitiate the proceedings.

In reply, Sri C.Ramachandra Raju, learned counsel, would assert that the bank has not followed the minimum one year stipulation for making payments under a One Time Settlement as per the Reserve Bank of India guidelines and cancellation of the offer within three months is *ex facie* illegal. He would again assert that the bank necessarily had to initiate proceedings afresh under the SARFAESI Act and the auction sale held on 28.06.2017 was therefore vitiated on grounds more than one.

At the outset, it may be noted that this writ petition was filed only on 21.06.2017. Though the main grievance of the petitioner is directed against the cancellation of the One Time Settlement by the bank under its letter dated 23.06.2016, no explanation was offered by the petitioner as to why he did not immediately seek redressal of his grievance with regard to such cancellation. It was only on 25.04.2017 that he addressed a letter to the bank seeking six months time to make the payment in terms of the One Time Settlement offered to him by the bank under its letter dated 01.03.2016. It is therefore clear that the petitioner did not choose to take any steps till the bank published the auction notice dated 07.06.2017 in the newspapers on 08.06.2017, proposing to sell his mortgaged properties on 28.06.2017.

We are informed by Sri B.Harinath Rao, learned counsel for the bank, that the sale held on 28.06.2017 also did not materialize for want of bidders. *Ergo*, the grievance of the petitioner as regards the said auction sale notice and the reserve price fixed therein is rendered purely academic and does not warrant consideration on merits. In any event, the claim of the bank that it obtained valuation of the subject property from an approved valuer on 26.09.2016 and thereupon fixed the reserve price stands unrebutted. Be that as it may.

The issues that however survive for consideration are – (1) whether the cancellation effected by the bank under the letter dated 23.06.2016 is valid, legal and binding on the petitioner, and (2) whether the bank could have resorted to further measures under the SARFAESI Act on the strength of the demand notice issued on 29.01.2014 under Section 13(2) thereof.

In so far as the first issue is concerned, though the petitioner claimed that the bank was bound to give one year's time for payment of the dues in terms of the One Time Settlement as per the guidelines prescribed by the Reserve Bank of India, no such guidelines were placed before this Court either along with the writ petition or during the course of arguments.

On the face of it, the claim of the petitioner that he is entitled to a year's time to clear the reduced dues in terms of the One Time Settlement appears to be illogical and against public interest. To begin with, the bank deals with public monies deposited by its customers and having extended loan facilities on the strength thereof to borrowers, such as the petitioner, the very fact that it is settling for a far lesser amount than is actually due from such borrower, in terms of repayment of the principal loan amount along with accrued interest thereon, is itself against commercial and public interest. However, as banks do resort to such settlements so as to cut their losses by at least making part-recovery of their lawful dues, such options exercised by banks cannot be held to be unlawful. However, when banks approve such reduced One Time Settlement offers to defaulting borrowers, it cannot be doubted that an indulgence is being shown to such borrowers and they cannot, as a matter of right, demand that they should be given sufficient time, as per their own convenience, to pay even such reduced dues. The very scheme and thrust of a One Time Settlement is aimed at enabling the bank to make recovery of the reduced dues, at least, within the stipulated time. If the borrower fails to comply with this time stipulation, he would no longer be entitled to the benefit of reduction in his dues as per such One Time Settlement.

Viewed in this light, it is clear that though the bank required the petitioner to make payment of the reduced dues of Rs.4.32 crore by March, 2016, he only deposited Rs.1.12 crore by the end of March, 2016. An additional sum of Rs.10.00 lakh was paid by him thereafter on 14.06.2016. When he asked for further time to make payment of the balance by letter dated 11.05.2016, the bank replied on 25.05.2016, giving him time up to 31.05.2016 to make the payment. He however failed to do so. Even thereafter, the bank took no action till 23.06.2016, when it revoked and cancelled the offer. In effect, the petitioner had nearly three months after 31.03.2016 to make the payment, but he did not choose to do so. As already pointed out *supra*, he silently accepted the revocation/ cancellation of the One Time Settlement by the bank under the letter dated 23.06.2016 and took no further steps till the end of April, 2017. This clearly demonstrates the lack of *bonafides* on the part of the petitioner as it reflects upon his seriousness in taking advantage of the One Time Settlement offered to him by the bank. The question of the bank calling upon him to show-cause before cancelling the One Time Settlement does not arise as no such requirement is posited in the terms and conditions of the One Time Settlement. This Court therefore finds no illegality or irregularity in the bank resorting to cancellation of the One Time Settlement offered to the petitioner.

In so far as the second issue is concerned, it is not in dispute that the bank, when it sanctioned the One Time Settlement under its letter dated 01.03.2016, made the same subject to the terms and conditions mentioned in the Annexure. Clause A(f)(iv) of the 'Terms and Conditions of the Settlement' reads as follows:

> "iv. In respect of cases where SARFAESI action has already been initiated, such actions would be kept in abeyance till receipt of entire payment under OTS by Bank. In case, the borrower/firm fails to honour the OTS, the Bank

shall have the right to continue SARFAESI action already initiated."

In terms of the aforestated clause, the bank reserved its right to continue with the action already initiated by it under the SARFAESI Act in the event the petitioner failed to honour the One Time Settlement. When the sanction of the One Time Settlement by the bank was without prejudice to its rights in relation to the demand notice dated 29.01.2014 already issued by it under Section 13(2) of the SARFAESI Act, it cannot be construed that the intervention of this One Time Settlement would have the effect of making the said demand notice lapse.

Though Sri C.Ramachandra Raju, learned counsel, would rely upon the judgment of this Court in **TAHER AHMED SIDDIQUI V/s. THE STANDARD CHARTERED BANK**[1], the *ratio* laid down in the said case has no application presently. That was a case where, having issued a demand notice under Section 13(2) of the SARFAESI Act, the secured creditor took no further steps for a long period of four years. It was in these circumstances that this Court held that, having slept over the demand notice with no reason whatsoever, the secured creditor could not fall back upon it to sustain the proceedings continued thereafter under the SARFAESI Act. The facts in the case on hand, on the contrary, demonstrate that the bank was utmost diligent in pursuing further measures under the SARFAESI Act after issuance of the demand notice and it was only after two attempts on its part to sell the secured assets came to naught that it approved the One Time Settlement proposal of the petitioner.

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[1]W.P.No.39673 of 2015 decided on 06.07.2017.

On the above analysis, this Court finds that the mere factum of the bank having approved the One Time Settlement offer under its letter dated 01.03.2016, did not have the effect of wiping out the earlier demand notice dated 29.01.2014 issued by it under Section 13(2) of the SARFAESI Act or the steps taken thereafter. The bank was therefore entitled to fall back upon the said demand notice and take further steps in the form of the impugned sale notice dated 22.05.2017 and the auction notice dated 07.06.2017. As already stated, the cancellation of the One Time Settlement by the bank under its letter dated 23.06.2016 also does not brook any interference, be it on facts or on any other ground.

The writ petition is therefore devoid of merit and is accordingly dismissed.

Interim order dated 27.06.2017 is already rendered infructuous as the sale held on 28.06.2017 did not materialise and the same is accordingly vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

15th FEBRUARY, 2018
<u>Note:</u> L.R. copy to be marked
B/o PGS