THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No.7220 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the Corporation Bank, Benz Circle Branch, Vijayawada, the petitioner herein, reads as under:

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ order or direction declaring the action of the 2nd respondent to release the payment to the 3rd respondent vide its proceedings NIELIT & CH/NPR-505/2018/2332, Dt.01.03.2018 as bad, arbitrary, illegal, unlawful, capricious and nonest in law and consequently to direct the 2nd respondent to release the payments to the petitioner against the amounts payable to the 3rd respondent amounting to Rs.9 crores and may pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case."

Sri Vasantha Rayudu, learned counsel representing Sri Bachina Hanumantha Rao, learned counsel for the petitioner bank, would contend that in the light of Section 13(4)(d) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), the second respondent organization is bound to remit to the petitioner bank the amounts due and payable by it to its borrower, the third respondent herein, as it has a security interest in the book debts of the third respondent by virtue of the hypothecation agreement entered into by and between the parties. He however concedes that the petitioner bank approached the Debts

Recovery Tribunal, Visakhapatnam, by way of O.A.No.193 of 2018 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act of 1993'), and also filed I.A.No.326 of 2018 therein seeking attachment of the amounts available with the second respondent organization.

Learned Assistant Solicitor General for India appearing for the second respondent organization would inform this Court that the Tribunal ordered notice in the aforestated I.A. and the matter is scheduled to come up on 14.03.2018.

In the light of the aforestated admitted facts, we are of the opinion that it is not open to the petitioner bank to come before this Court, having already invoked the statutory remedy available to it under the Act of 1993. Further, the very fact that the petitioner bank requested for attachment of the monies available with the second respondent organization indicates that the prayer put forth before this Court is nothing but a replication thereof.

We strongly condemn the practice of litigants, be they the borrowers or the secured creditors, in approaching this Court by way of writ petitions under Article 226 of the Constitution of India, having invoked the statutory remedies available under the SARFAESI Act or the Act of 1993 before the jurisdictional Debts Recovery Tribunal. The statutory remedies under the SARFAESI Act or the Act of 1993 are to be exhausted in their entirety and cannot be used as stepping stones to approach this Court even before final adjudication is undertaken by the jurisdictional Debts Recovery Tribunal in the proceedings before it.

The writ petition is accordingly dismissed leaving it open to the petitioner bank to pursue the pending proceedings before the Debts Recovery Tribunal, Visakhapatnam.

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

SANJAY KUMAR,J

D.V.S.S.SOMAYAJULU,J

Date: 06.03.2018
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