THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.12032 of 2018

ORDER: (per SK,J)

The prayer of the petitioners in this case 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, Order or direction more particularly one in the nature of Writ of Mandamus by declaring the action of the respondent bank in issuing the notice under Rule 8(2) of the Security Interest Enforcement Rules, 2002, dated 14.03.2018 as illegal. arbitrary unconstitutional and also against the principles of the Natural Justice and consequentially, stay all further proceedings in respect of the notice issued under Rule 8(2) of the Security Interest Enforcement Rules, 2002, dated 14.03.2018 by the respondent bank to the petitioners and direct the respondent bank to reschedule the loan overdraft facility of the 1st petitioner and permit the 1st petitioner to deposit the amounts as rescheduled by the respondent bank by bringing the account out of purview of NPA category and to pass such other order or orders may deem fit and proper in the circumstances of the case, in the interest of justice.'

Reliance was placed upon a Division Bench judgment of this Court in CHEMBETI BRAHMAIAH CHOWDARY v. STATE BANK OF HYDERABAD[1] in support of the contention that in the event there is a time gap between classification of a loan account as a Non-Performing Asset (NPA) and initiation of proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), and in the interregnum, if any payments are made which have the effect of upgrading the account and bringing it out of the contours of the classification as a NPA, initiation of the proceedings under the SARFAESI Act would be unsustainable.

---

[1] AIR 2010 ANDHRA PRADESH 203

Taking note of the aforestated judgment, this Court directed Sri M.Srikanth Reddy, learned counsel for the State Bank of India, the respondent herein, to find out whether payments made by the petitioners brought their loan account out of the categorisation as a NPA. Thereafter, on 01.05.2018, this Court granted interim stay of further proceedings subject to the condition that the petitioners deposit a sum of Rs.2,00,000/- on or before 04.06.2018.

The State Bank of India filed a counter affidavit stating that the petitioners' loan account was classified as a NPA on 27.02.2016. Demand notice dated 01.03.2016 was issued under Section 13(2) of the SARFAESI Act quantifying the outstanding dues as on 29.02.2016 at Rs.9,49,120/-. In the gap between classification of the subject loan account as a NPA on 27.02.2016 and issuance of the demand notice on 01.03.2016, the petitioners made only one payment on 29.02.2016. On that day, they paid a meagre amount of Rs.33,000/- which, according to Sri M.Srikanth Reddy, learned counsel, did not have the effect of bringing the loan account out of the classification as a NPA.

Sri M.Saleem, learned counsel for the petitioners, does not dispute the fact that no reply affidavit was filed rebutting the averments made in the counter-affidavit.

It is therefore clear that the edict laid down in CHEMBETI BRAHMAIAH CHOWDARY[1] has no application to the case on hand on facts. That apart, the prayer of the petitioners is to direct the bank to reschedule their loan overdraft facility.

Sri M.Srikanth Reddy, learned counsel, would state that the subject loan account is in the nature of cash credit facility and rescheduling thereof would be permissible in terms of banking norms, if the petitioners

satisfy them. He would state that the petitioners would be required to demonstrate before the bank the viability of their business by producing their books of accounts and other financial data.

In any event, it would not be within the province of this Court to direct a bank to reschedule a loan account. It is for the petitioners to satisfy the bank as to their eligibility and entitlement for such rescheduling by producing the necessary material.

Leaving it open to the petitioners to do so, the writ petition is dismissed. This order of dismissal shall however not preclude the bank from considering the eligibility of the petitioners to seek rescheduling of their loan account in accordance with the banking norms. Interim order dated 01.05.2018 shall stand vacated.

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

_____
SANJAY KUMAR,J

_____
T.AMARNATH GOUD,J

Date:02.07.2018

GJ