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

WRIT PETITION NOS.41624 OF 2015 AND 11242 OF 2016

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

W.P.No.41624 of 2015 was filed by the Punjab National Bank (*hereinafter*, 'the bank') assailing the order dated 30.11.2015 passed by the Debts Recovery Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in S.A.No.31 of 2014, whereby the bank was restrained from taking coercive steps against the mortgaged properties of M/s.Ghanshyam Das Gems and Jewels, Hyderabad, a partnership firm, the second respondent, till the issue was finally settled by the Tribunal in the pending O.A. or by the criminal Court. S.A.No.31 of 2014 was filed by the second respondent firm under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), assailing the possession notices dated 08.08.2012 and 16.08.2012 issued by the bank under Section 13(4) of the SARFAESI Act in respect of its mortgaged properties. This S.A. was disposed of by the Tribunal, by the order dated 30.11.2015, as aforestated.

W.P.No.11242 of 2016 was filed by Balkishan Agarwal, the father of Sanjay Kumar Agarwal, the Managing Partner of M/s.Ghanshyam Das Gems and Jewels. He assailed the action of the bank in taking over possession of the property admeasuring 582 square yards, along with the building thereon, bearing H.No. 1-2-593/17 at Gaganmahal Colony, Domalguda, Hyderabad, pursuant to the order dated 31.07.2015 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.1870 of 2015, in exercise of power under Section 14 of the SARFAESI Act. He sought a consequential direction to the bank to redeliver possession of the said property by setting aside the order dated 31.07.2015.

It appears that the bank issued sale notice dated 04.11.2015 proposing to auction the firm's mortgaged properties on 07.12.2015 during the pendency of S.A.No.31 of 2014 before the Tribunal. However, no steps were taken by the firm to amend its prayer therein or to file an independent Securitization Application assailing the said sale notice. The Tribunal however took note of this development in the final order dated 30.11.2015. It also took note of the allegation of the firm that one Thirumal, Chief Manager of the bank, forged a letter purported to have been addressed by it, leading to lodging of a criminal complaint. The firm also alleged that the purported delivery of 100 Kgs. of gold to it was fabricated with connivance of the bank officials, as the signature in the Delivery Register had been forged.

On the other hand, the bank pointed out that it had filed a complaint with the Central Bureau of Investigation against the firm and upon investigation, a charge-sheet was filed against its Managing Partner. The bank further stated that the charge-sheet filed against its officials related to another transaction. According to the bank, it was the Managing Partner of the firm who had forged certain documents, having availed loans under the gold metal scheme against the security of its properties. The firm was liable to repay the same but owing to the default committed by it, its account had been classified as a non-performing asset and recovery proceedings were initiated under the SARFAESI Act. The bank therefore submitted that it should be permitted to go ahead with the same.

The Tribunal thereupon framed the following issues for consideration:

i) Whether there is anything due and payable by the Applicant towards the Gold Metal Loan of Rs.50.00 crores to be recovered from the sale of the mortgaged properties?

ii) Whether there is a delivery of gold of 100 Kgs to the Managing Partner of the Applicant?

iii) Whether the loan Gold Metal Loan account of Rs.19.00 crores has been closed and the security created do not extend to further withdrawal of the gold under the Scheme?"

On the first issue, the Tribunal noted that the documents on record showed that the subject properties were mortgaged by the firm to secure the gold metal loan of Rs.19.00 crore and not the loan of Rs.50.00 crore. It accordingly held that the bank could not take action under the SARFAESI Act for the unsecured portion of the loan. On the second issue, the Tribunal opined that as the transaction between the bank and the firm with regard to delivery of 100 Kgs. of gold was the subject matter of the criminal case, it would be unjust on its part to come to any conclusion pending the criminal proceedings. On the third issue, the Tribunal *prima facie* found that the transaction was closed upon repayment of the loan by the firm. It also noted that the bank had already filed O.A.No.532 of 2012 before it for recovery of its dues from the firm. The Tribunal then noted its findings as under:

> "*Prima facie*, I do not find that the Schedule Properties are not mortgaged either for the balance of Rs.50.00 crores loan or subsequent loan transactions and the loan account of Rs.19.00 crores is closed.'

Further, being of the opinion that permitting the bank to sell the subject properties under the provisions of the SARFAESI Act would be against the interest of the firm and may cause it irreparable loss, the Tribunal restrained the bank from taking any coercive steps against the said properties till the issue was finally settled by it in the O.A. or by the criminal Court.

Significantly, the Tribunal did not even deal with the possession notices which were impugned in the S.A. It straightaway proceeded to consider the impending sale of the properties in question by the bank though there was no challenge thereto. We are informed that a review petition has been filed by the firm before the Tribunal in this regard, as possession of the mortgaged properties was already secured by the bank but no relief was granted to the firm in relation thereto. The attempt by the petitioner in W.P.No.11242 of 2016, the father of the Managing Partner of the firm, is also to secure redelivery of possession of one such property.

At this stage, it may be noted that the demand notice dated 18.04.2012 issued by the bank under Section 13(2) of the SARFAESI Act pertained to both the loans, viz., the loan of Rs.19.00 crore and also the loan of Rs.50.00 crore. The amount due as against both these loans as on 31.03.2012 was shown as Rs.30,89,74,721/-. On the strength of this demand notice, possession notices dated 08.08.2012 and 16.08.2012 were issued by the bank under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002'). The first possession notice dated 08.08.2012 referred to three items of property – (1) land admeasuring 582 square yards, with building thereon, bearing H.No.1-2-593/17, Gaganmahal Colony, Domalguda, Hyderabad, which stood in the name of Balakishan Agarwal, the subject matter of W.P.No.11242 of 2016, (2) plot bearing No.50/B in Sy.No.5/3, admeasuring 1000 square yards, Raidurg Panmaktha Village, Sherilingampally Mandal, Ranga Reddy District, standing in the name of Sanjay Kumar Agarwal, and (3) land admeasuring Ac.0.31 guntas in Sy.No.20/2, Tellapuram Village, Ramachandrapuram Mandal, Medak District, standing in the name of one Parimala Bai. The second possession notice dated 16.08.2012 detailed three items of property, being different extents of land in Kothwalguda Village and Gram Panchayat, Shamshabad Mandal, Ranga Reddy District.

Though the Tribunal straightaway recorded a finding on issue No.1 that immovable property security was not offered for the loan of Rs.50.00 crore availed by the firm from the bank, there is no discussion whatsoever as to how the Tribunal arrived at this finding. There is no indication of the Tribunal having examined the mortgage documents before reaching this conclusion. The documents aforestated indicate otherwise. Further, the Tribunal seems to have been sidetracked by the intervening allegations and cross-allegations made by the firm and the bank against each other, leading to criminal proceedings, and completely lost sight of the actual *lis* before it, viz., the validity of the possession notices dated 08.08.2012 and 16.08.2012.

Be it noted that under Section 17 of the SARFAESI Act, what requires to be looked into is the grievance ventilated as to the measures initiated by the secured creditor under Section 13(4) thereof. In the case on hand, challenge before the Tribunal was to the possession notices dated 08.08.2012 and 16.08.2012 issued by the bank under Section 13(4) of the SARFAESI Act. The adjudication therefore ought to have been limited only to this aspect. Unfortunately, the Tribunal, having gone off at a tangent, did not even address the issue raised before it and taking note of the pendency of criminal proceedings and O.A.No.532 of 2012 on its file, the Tribunal passed an order restraining the bank from taking any coercive steps in relation to the secured assets.

In this regard, it may also be noted that in the light of the law laid down by the Supreme Court in **TRANSCORE V/s. UNION OF INDIA**[1], pendency of proceedings initiated by the bank under the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, in the form of the O.A. did not bar it from simultaneously initiating recovery proceedings under the SARFAESI Act. Therefore, the pendency of the O.A. on its file could not have been used as a lever by the Tribunal to prevent the bank from taking further steps under the SARFAESI Act.

On the above analysis, this Court finds that the order dated 30.11.2015 passed by the Tribunal in S.A.No.31 of 2014 cannot be sustained on grounds more than one. The order is accordingly set aside and the matter is remitted to the file of the Tribunal for consideration afresh of the challenge laid therein to the possession notices dated 08.08.2012 and 16.08.2012. As the issue is now to be decided afresh by the Tribunal upon remand, it would be open to the petitioner in W.P.No.11242 of 2016 to air his grievance before the Tribunal by taking necessary steps.

The writ petitions are disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

20th FEBRUARY, 2018

PGS

[1] (2008) 1 SCC 125