HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.20426 of 2018

ORDER: ***(per Hon'ble Sri Justice Ramesh Ranganathan)***

This Writ Petition is filed questioning the order passed by the Debt Recovery Tribunal, Visakhapatnam in S.A.No.187 of 2018 dated 11.05.2018.

Pursuant to the demand notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), the respondent-bank issued a notice under Section 13(4) of the SARFAESI Act on 12.04.2017. Aggrieved by the said notice issued under Section 13(4), the petitioner approached the Debt Recovery Tribunal, Visakhapatnam filing S.A.No.187 of 2018. They filed I.A.No.856 of 2018 seeking stay of all further proceedings, pursuant to the notice issued under the SARFAESI Act, with respect to the petition schedule property. By the order, impugned in this Writ Petition, dated 11.05.2018 the Debt Recovery Tribunal granted stay of all further proceedings on condition that the petitioner deposited 20% of the notice amount into the respondent bank within 15 days from the date of the order; and another 15% of the notice amount within 15 days thereafter. The respondent-bank was directed to stay all further proceedings, pursuant to the notice issued under the SARFAESI Act in respect of the petition schedule property, until further orders. The Debt Recovery Tribunal made it clear that, in the event of petitioner failing to deposit any of the above said amounts in the respondent bank within the stipulated time, the stay granted shall stand automatically vacated and the respondent bank is at liberty to proceed further as per Rules.

Sri P. Venkateswarlu, learned counsel for the petitioner, would submit that, since the petitioner is running an educational institution, any proceedings initiated by the respondent bank to take possession of the subject property, by instituting proceedings under Section 14 of the SARFAESI Act, would deprive the students studying in the College of much needed education; if the petitioner is granted reasonable time, say of two or three months, they would repay the entire amount; and if, in the interregnum, they are dispossessed from the property, they would be put to irreparable loss and injury.

On the other hand, Sri A. Krishnam Raju, learned Standing Counsel for the Respondent-bank, would submit that the notice, under Section 13(2) of the SARFAESI Act, was issued as early as on 02.02.2017; thereafter, the petitioner has merely paid Rs.17 lakhs till date; the total outstanding loan amount was in excess of Rs.6.00 crores; after the Debt Recovery Tribunal passed the interim order on 11.05.2018, the petitioner has not paid even a single rupee to the bank till date; their *bona-fides,* in now stating that they would repay the entire loan amount, in two or three months, is suspect; and no indulgence should to be shown to them by this Court in proceedings under Article 226 of the Constitution of India.

It has not been disputed before us that the petitioner has failed to pay even a single rupee, much less the 20% and 15% of the notice amount, as directed by the Debt Recovery Tribunal, Visakhapatnam. The submission made across the bar today by Sri

P. Venkateswarlu, learned counsel for the petitioner, that the entire amount would be paid by the petitioner within two months, is belied by the petitioner's earlier conduct in not paying even the 35% amount, directed to be paid by the DRT, more than four months ago on 11.05.2018. Even in the writ affidavit, except a vague averment that they would repay the amount within a reasonable time, no undertaking is furnished that the entire amount would be paid within a specified period.

It would be wholly inappropriate for this Court, in proceedings under Article 226 of the Constitution of India, to re-schedule the debt due from the petitioner to the bank, or to re-structure the loan extended to them. Any request for extension of time for repayment can only be addressed to the bank by the borrower; and it is for the bank to decide whether or not time, for repayment, should be extended. Suffice it to make it clear that the order now passed by us shall not disable the petitioner from approaching the bank requesting them to grant time; and for the bank, if they so chose, to consider the same in accordance with law.

The Writ petition however fails and is, accordingly, dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 19.09.2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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WP No.20426 of 2018
(per Hon'ble Sri Justice Ramesh Ranganathan)

Date: 19.09.2018

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