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

WRIT PETITION No.24545 of 2018

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

In this writ petition, a writ of *mandamus* is sought to declare that all the proceedings initiated by the respondent Bank against the petitioners under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), while seizing huge valuable stocks, plant and machinery on 27.03.2017, are illegal and contrary to the statutory provisions; and for a consequential direction to the respondent Bank to give credit for the value of the stocks and movable assets as on the date of seizure, and release the collateral security as against payment of the balance amount, if any.

The first petitioner firm, carrying on business of processing of mining produce and processing raw material of minerals, availed a loan from the respondent Bank; and the second petitioner gave her properties as collateral security, in addition to the factory premises, apart from hypothecation of stocks, plant and machinery and all other movable assets of the partnership firm, for the loan extended to the first petitioner.

It is the case of the petitioners that, even without intimation, the respondent Bank took physical possession of the factory unit with all movable assets including hypothecated stocks; and the respondent Bank issued a notice under Section 13(2) of the SARFAESI Act on 03.04.2017 demanding repayment of Rs.2,66,98,106/- alleging that the petitioners account had become a Non Performing Asset w.e.f. 31.03.2017. By their letter dated 20.05.2017, the petitioners requested the respondent Bank to release the stocks, and to restructure the loan, enabling them to carry on business. By letter dated 23.05.2017, the respondent Bank rejected the petitioners' request stating that they were proceeding with recovery. The petitioners were called upon to pay Rs.40,00,000/- more, in addition to Rs.5,00,000/- paid on 30.03.2017. A notice was issued on 23.10.2017, for auction of the immovable properties including the factory unit, and for recovery of Rs.2,86,52,863/-. Aggrieved thereby, the petitioners approached the Debts Recovery Tribunal – II, Hyderabad in S.A.No.1443 of 2017, and sought interim stay of the auction scheduled to be held on 27.11.2017.

Before the Debts Recovery Tribunal, the respondent Bank did not file any documents along with their counter affidavit. The petitioners filed their rejoinder undertaking to purchase the stocks, available in the factory unit of Rs.1,61,45,000/-, and requested the respondent-Bank to first dispose of the factory unit, and the stocks thereat; and to adjust the said amounts against the total amounts due from the petitioners. The Debts Recovery Tribunal– II, Hyderabad, passed an order directing the petitioners to deposit 15% of the claim amount before 27.11.2017 i.e., the date of auction, and to pay the balance amount within 15 days thereafter. The petitioners filed W.P.No.40034 of 2017 and, while initially an interim order was passed, the writ petition was later closed leaving it open to the petitioners to pursue their Securitisation Application, or to invoke appropriate remedies in accordance with law before the proper forum if they were aggrieved by the subsequent developments.

As noted herein above, the petitioners' grievance is that the respondent Bank was proceeding against their residential properties, without first putting the factory and the stocks therein to sale. They also claim that, while the value of the pledged stock is more than

Rs.1,50,00,000/-, the Bank had valued the said stocks, in the sale notice, at merely Rs.5,00,000/-. Reliance is placed by Sri Ch.Srinivasa Raju, learned counsel for the petitioners, on the judgment of the Supreme Court in Lallan Prasad v. Rahmat Ali[1] and the State Bank of Saurashtra v. Chitranjan Rangnath[2] in this regard.

It is necessary to note that, in Lallan Prasad[1], the appellant had invoked the jurisdiction of the Civil Court seeking repayment of the amounts advanced against a promissory note; and, after the trial Court had recorded evidence, the respondents' plea for return of the goods pledged was rejected. The respondents therein had preferred an appeal to the High Court which held that the appellant was not entitled to any relief since the appellant had contended that the goods were never pledged with them. Aggrieved thereby, the appellant had carried the matter in appeal to the Supreme Court. In State Bank of Saurashtra[2], the Bank filed a suit, for recovery of the amounts due, against the legal representatives of the deceased principal debtor and the surety. After the suit was decreed, the matter was eventually carried in appeal to the Supreme Court.

Disputed questions of fact, as to whether the value of the goods pledged by the petitioners had depleted because of the fault of the respondent Bank; whether the respondent Bank was justified in valuing the pledged goods at Rs.5,00,000/-, instead of Rs.1,50,00,000/- as claimed by the petitioners, etc are all matters which can only be adjudicated on evidence being adduced in this regard by the parties concerned. In the present case, the petitioners have, instead of approaching the competent Civil Court seeking damages, if any, suffered

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[1] AIR 1967 SC 1322
[2] AIR 1980 SC 1528

by them as a result of the respondents alleged failure to adequately protect the pledged goods, and in not ensuring that its value was not depleted, invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, though the writ petition filed by them earlier was dismissed.

It is evident, from the material placed on record, that S.A.No.1443 of 2017 filed by the petitioners is pending adjudication before the Debts Recovery Tribunal – II, Hyderabad. W.P.No.40034 of 2017 filed by the petitioners earlier was closed by a Division Bench of this Court, by its order dated 12.07.2018, leaving it open to the petitioners to pursue their Securitisation Application, or to invoke appropriate remedies in accordance with law before the proper forum. In view of the aforesaid order of the Division Bench, in W.P.No.40034 of 2017 dated 12.07.2018, the petitioners ought not to have again invoked the jurisdiction of this Court, and should, instead, have either pursued S.A.No.1443 of 2017, or availed any other appropriate remedy.

The writ petition fails and, is accordingly, dismissed. Needless to state that the order now passed by us shall not disable the petitioners either from pursuing S.A.No.1443 of 2017 filed by them, or availing any other appropriate legal remedy available to them in law.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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(RAMESH RANGANATHAN, J)

Date: 29.08.2018

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(KONGARA VIJAYA LAKSHMI, J)

Note: Issue CC by 05.09.2018
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