HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition Nos.25882 and 25889 of 2018

COMMON ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

In both these writ petitions, the petitioners question the action of the respondent-bank in putting their properties to auction pursuant to the auction notice published in the newspapers on 06.07.2018 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

The petitioners are, admittedly, the guarantors of the loan taken by M/s.Varalaxmi Parboiled Rice Mills Pvt. Ltd. On the said company defaulting in repayment of the loan, the respondent-bank initiated proceedings under the SARFAESI Act and, pursuant to a sale notice dated 09.07.2018, an auction was held on 26.07.2018 wherein both the subject properties were sold in favour of the highest bidder for Rs.50.75 lakhs and Rs.47.50 lakhs.

Sri G.Hari Narayana, learned counsel for the petitioners, would submit that, subsequent to the auction, the respondent-bank had introduced a One Time Settlement (OTS) scheme afresh on 09.08.2018; pursuant thereto, the Bank had offered the OTS benefit to the borrower; it is wholly inequitable on the part of the respondent-bank to auction the properties of the guarantors, while extending the benefit of OTS to the borrower; and the OTS benefit, extended to the borrower, should cover the properties belonging to the guarantors also.

Sri A.Krishnam Raju, learned Standing Counsel for the respondent-bank, would submit that the borrower was extended a loan facility which, along with interest, now exceeds Rs.13.00 crores; even after these two properties were put to sale, a sum in excess of Rs.12.00 crores is still due and payable by the borrower; with a view to recover atleast a part of these dues, an OTS offer was made; by letter dated 10.08.2018, the borrower was called upon to pay Rs.8.00 crores towards OTS, after excluding the amount fetched in the auction on the properties of the petitioner-borrower being put to sale; and the scheme itself provides that the benefit of the one-time settlement scheme is without prejudice to the respondent bank's right to continue the SARFAESI proceedings initiated by them earlier.

It is not in dispute that the respondent-bank is entitled to proceed against the properties of both the borrower, and the guarantor, for the recovery of its dues under the provisions of the SARFAESI Act. Since the petitioners do not dispute their having furnished guarantees for the loan extended to the borrower, the action of the respondent-bank, in initiating proceedings under the SARFAESI Act, cannot be faulted. Extension of the benefits of the OTS scheme, to the borrower, is an event subsequent to the filing of the writ petition and no such plea could have, nor has it, been taken in the writ affidavit.

As the action of the respondent-bank in initiating proceedings under the SARFAESI Act cannot be faulted, we see no reason to interfere. Any grievance which the petitioners may have, with regards the OTS offer made by the bank to the borrower, can only be agitated in duly constituted legal proceedings wherein extension of the benefit of the OTS scheme to the borrower, while putting the petitioners' (guarantors) properties to sale, is questioned, and the borrower is arrayed as a respondent in such proceedings.

Leaving it open to the petitioners to question the OTS scheme extended to the borrower, in duly constituted legal proceedings wherein the borrower is also arrayed as a respondent, both these Writ Petitions are disposed of.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

27th August, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition Nos.25882 and 25889 of 2018

Date: 27.08.2018

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