

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.30265 OF 2018

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

The relief sought for in this Writ Petition is to declare the action of the respondents in proceeding against the petitioner's property, of an extent of Acs.4.33 gts in Survey No.871 of Kadthal Village, Amanagal Mandal, Mahaboobnagar District along with schedule of the property under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity), as without jurisdiction and as violative of Article 300-A of the Constitution of India.

The petitioner contends that it is the respondent-Bank which has breached the contract, and they have played a fraud on them; their action, in now proceeding against the petitioner, is illegal and is liable to be set aside; since the entire contract is vitiated by fraud, the provisions of Section 58 of the Transfer of Property Act are violated; while they had only availed a loan of Rs.5.00 crores, of which they had paid Rs.65.00 lakh and Rs.2.25 crores, and the balance due was only Rs.2.10 crore, the respondent-Bank was claiming Rs.12,44,57,702/- towards the loan account; and the petitioner was ready and willing to pay the balance amount due of Rs.2.10 crores with immediate effect.

The respondent-Bank is said to have initiated proceedings, under the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993, by filing O.A.No.2728 of 2017. The fact

that the respondent-Bank has issued a notice under Section 13(2) of the SARFAESI Act and, thereafter, a notice under Section 13(4) of the SARFAESI Act, before putting the subject property to sale, is admitted by the petitioner in his Writ affidavit.

Any grievance which the petitioner may have against the respondent-Bank can always be agitated by them in appropriate legal proceedings before the DRT by way of an application made by them under Section 17 of the SARFAESI Act. In the exercise of its extra-ordinary jurisdiction, under Article 226 of the Constitution of India, this Court would not undertake an examination of disputed questions of fact. As the petitioner can raise all such contentions as are raised in this Writ Petition, including the plea of fraud, before the DRT in an application made under Section 17 of the SARFAESI Act, we see no reason to interfere, or to grant the relief sought for in this Writ Petition.

Leaving it open to the petitioner to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

27th August 2018
RRB