HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.31139 of 2018

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

The facts stated in the writ affidavit, if true, do not show the officials of the Punjab National Bank (1st respondent herein) in good light, and give rise to a strong suspicion of collusion of some of the officials of the said bank, with the borrowers (i.e respondents 3 and 7) resulting in the distinct possibility of Rs.65.00 crores, advanced by the bank as a loan to the 3rd respondent, being required to be written off as a bad debt.

Facts, to the limited extent necessary, are that petitioners 1 to 7 claim to be the owners of the subject property which was furnished as security by the 7th respondent, for the loan extended by the 1st respondent-bank to the 3rd respondent, for a sum of Rs.65.00 crores in the year 2012. It is their case that a sale deed was executed in 1944 in favour of three persons viz, Sri Raj Reddy, Sri Rajamalla Reddy and Sri Lingamaiah who, thereafter, continued to be the joint owners of the property having undivided one-third share each therein i.e 1/3rd share of the total extent of Ac.31.06 guntas. Sri Raj Reddy is said to have sold his one-third share to Sri Rajamalla Reddy before 1971 and consequently, while Sri Rajamalla Reddy had title over two-third share of the subject property, Sri Lingamaiah had title over the remaining one-third. Respondents 4 to 7 herein are the children of late Sri Lingamaiah who is said to have had two wives. Both the wives of Sri Lingamaiah viz. Narsamma and Lakshmamma are said to have executed agreements of sale in favour of the 1st petitioner on 10.04.1971 and 12.04.1971 for their entire one-third share of the subject property. Sri Rajamalla Reddy is said to have sold some extent of land to the 1st petitioner and, as a result, while the 1st petitioner is said to own half the undivided share of the subject property, petitioners 2 to 7 (legal heirs of Sri Rajamalla Reddy) are said to own the remaining half.

It is petitioners' case that a partition Suit was filed by Smt. Narsamma W/o. Lingamaiah and respondent 4 to 6 (children of Lingamaiah) in O.S.No.231 of 1987. Both Sri Rajamalla Reddy and the 1st petitioner are said to be parties to the said Suit. A compromise decree is said to have been passed on 13.08.1990 wherein both Smt. Narsamma and respondents 4 to 6 are said to have admitted that the 1st petitioner and Sri Rajamalla Reddy owned half the undivided share each in the entire extent of Ac.31.06 guntas of land.

Despite the compromise decree, respondents 4 to 6 appear to have instituted succession proceedings before the Tahsildar who, by his order dated 12.09.2011, is said to have declared respondents 4 to 6 as the legal heirs of Sri Lingamaiah. The 1st petitioner is said to have questioned the order, passed by the Tahsildar on 12.09.2011, before the Revenue Divisional Officer who, by his order dated 19.01.2013, is said to have set aside the order of the Tahsildar. Respondents 4 to 6 herein filed a revision, before the Joint Collector, which was also dismissed by order dated 27.09.2014. The order of the Joint Collector dated 27.09.2014 is said to have attained finality.

It is only after the Revenue Divisional Officer had cancelled the succession certificate issued earlier by the Tahsildar, vide proceedings dated 19.01.2013, that respondents 4 to 6 are said to have executed a sale deed in favour of respondent No.7 on 21.03.2014 for an extent of Acs.2.00 of land. As to how respondents 4 to 6, who are said to be parties to the compromise decree in O.S.No.231 of 1987 and whose succession certificate was set aside by the Revenue Divisional Officer vide proceedings dated 19.01.2013, could have sold an extent of Acs.2.00 of land to respondent No.7 necessitates enquiry.

What is a matter of concern is that the 1st respondent-bank should have extended a loan facility of Rs.65.00 crores, in favour of the 3rd respondent in the year 2012, based on the guarantee furnished by the 7th respondent; and to have entered into an agreement with them on 01.03.2012, long before the subject property was sold by respondents 4 to 6 in favour of the 7th respondent on 21.03.2014.

Sri M.Sravan Kumar, learned counsel appearing for the 1st respondent-bank, would submit that the loan granted to the 3rd respondent became a Non Performing Asset on 24.03.2016; a demand notice, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was issued to the 3rd respondent and to the guarantors on 09.05.2016; the possession notice, under Section 13(4) of the SARFAESI Act, was issued thereafter; a notice of sale was issued under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules") on 10.08.2018, fixing the date of auction as 10.09.2018, questioning which the petitioners had filed the present writ petition; and, by its order dated 10.09.2018, this Court, while permitting the auction scheduled to be held on 10.09.2018 to go on, had directed that the sale shall not be confirmed for a period of four weeks.

Sri C.Naresh Reddy, learned counsel appearing on behalf of respondents 4 to 6, would submit that no bidders came forward to purchase the subject property, in the auction scheduled on 10.09.2018, evidently because people in the area, where the subject property is located, were aware that the said property is under litigation.

While cancellation of the auction scheduled to be held on 10.09.2018, because of absence of any bidders, can be said to render the writ petition infructuous, as the cause in this writ petition does not survive, the facts of the present case, if true, are disconcerting as public funds appear to have been frittered away by the officials of the 1st respondent-bank even without examining the credentials of the guarantor-7th respondent. As we are satisfied that these aspects should be enquired into, suffice it to direct a copy of this order to be marked to the Chairman and Managing Director of the Punjab National Bank who, we trust, would cause an enquiry into the manner in which such a loan was extended; whether any of its officers had colluded with respondents 4 to 7, in extending the loan facility to the third respondent on the subject property being furnished as surety, by the 7th respondent; and whether the bank officials had satisfied themselves of the title of the 7th respondent over the subject property, when the title of its vendors, (i.e., respondents 4 to 6), who were parties to the compromise decree in the partition suit in O.S. No.231 of 1987, is itself doubtful.

Since the auction, scheduled to be held on 10.09.2018, has been cancelled, albeit on the ground of absence of bidders, there is no imminent threat to the petitioners' possession over the subject property. Since all these questions of fact necessitate elaborate examination, on evidence being adduced by the parties concerned, we initially thought it appropriate to relegate the petitioners to the remedy of a Civil Suit, protecting their possession for a limited duration.

Sri B.Vijaysen Reddy, learned counsel for the petitioners, would submit that, in the light of the law declared by the Supreme Court in **Jagdish Singh vs. Heeralal[1],** even a stranger to the transaction is now required only to approach the DRT under Section 17 of the SARFAESI

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[1] (2014) 1 SCC 479

Act; and since a copy of the Section 13(2) and the Section 13(4) notice was not served on the petitioners, (presumably because they were neither the borrowers nor the guarantors), they are not in a position to avail their remedy of approaching the DRT under Section 17 of the SARFAESI Act.

Sri M.Sravan Kumar, learned counsel for the 1st respondent-bank, undertakes to make available copies of the demand notice issued under Section 13(2) of the SARFAESI Act, the possession notice issued under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Rules, and a copy of the sale notice issued under Rule 9(1) of the Rules, to the petitioners within one week from today.

Suffice it, therefore, to dispose of the writ petition leaving it open to the petitioners to approach the DRT, under Section 17 of the SARFAESI Act, within six (6) weeks from today. For a period of two months from today, the 1st respondent-bank shall not put the subject property to sale. Needless to state that any proceedings, instituted by any of the parties to this writ petition, shall be adjudicated by the DRT on its merits uninfluenced by any observations made by us in this order.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

20th September, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.31139 of 2018

Date: 20.09.2018

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