HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Writ Petition No.33469 of 2018

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

Heard Sri K.Venkata Rangadas, learned counsel for the petitioner, and Sri K.Mallikarjuna Rao, learned Standing Counsel for the 1st respondent-bank.

The petitioner, hitherto a Director of the 3rd respondent-company, furnished the subject property as security for the loan advanced by the 1st respondent-bank in favour of the 3rd respondent. Eventually, by letter dated 13.06.2018, the One Time Settlement proposal submitted by the 3rd respondent was accepted by the 1st respondent-bank in terms of which a sum of Rs.28.00 crores was required to be paid in full and final settlement of the entire dues. A sum of Rs.6.00 crores was to be paid before 20.06.2018, of which the borrower was required to deposit Rs.5.00 crores; and to pay the remaining Rs.1.00 crore after the property of M/s.Sri Lakshmi Vallabha Cold Storage Pvt. Ltd was released by the bank. The One Time Settlement scheme made it clear that the personal guarantee of the guarantor would continue till successful closure of the loan account as per the sanction letter; and the remaining sum of Rs.22.00 crores must be paid within one year from the date of the approval.

Contending that, though the 3rd respondent had paid Rs.5.00 crores, the 1st respondent-bank had not released the property of M/s.Sri Lakshmi Vallabha Cold Storage Pvt. Ltd. of which the petitioner is a Director, the petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

In his counter-affidavit, the Assistant General Manager of the 1st respondent-bank stated that failure to make payment before 20.06.2018 disentitled the petitioner from challenging the sale of the subject property;

the petitioner is not offering to pay Rs.1.00 crore even as on date for release of the property; the liability of the borrower and the guarantor is joint and several; the petitioner cannot claim any preference in this regard; and the 1st respondent-bank is justified in proceeding against the borrower and the guarantors, as well as the mortgagors, for recovery of the amount which is for a sum in excess of Rs.33.37 crores as on 31.07.2018, with subsequent interest and cost of sale.

Sri K.Mallikarjuna Rao, learned Standing Counsel for the 1st respondent-bank, would submit that the 1st respondent-bank is ready and willing to release the subject property in favour of M/s.Sri Lakshmi Vallabha Cold Storage Pvt. Ltd. on payment of Rs.1.00 crore; the 1st respondent-bank had invoked the jurisdiction of the Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act; they intend filing an application before the Debts Recovery Tribunal for a consent decree to be passed in terms of the One Time Settlement Scheme; and it is only because the borrower has chosen not to come forward on account of the pendency of this writ petition, and as Rs.1.00 crore has not yet been paid, that the bank not been able to approach the Debts Recovery Tribunal for a consent decree to be passed.

It is no doubt true that the letter dated 13.06.2018 does appear to indicate that on deposit of Rs.5.00 crores, and on the property of M/s.Sri Lakshmi Vallabha Cold Storage Pvt. Ltd being released, the balance of Rs.1.00 crore would be paid by the 3rd respondent-borrower before 20.06.2018. While the 1st respondent-bank has not released the subject property so far, the fact also remains that the 3rd respondent-borrower has not paid Rs.1.00 crore even till date, much less before 20.06.2018.

While Sri K.Venkata Rangadas, learned counsel for the petitioner, would submit that a sum of Rs.2.8 crores was paid subsequently towards the very same loan account, Sri K.Mallikarjuan Rao, learned Standing Counsel, would submit that the amount was paid in terms of the One

Time Settlement scheme; and the sum of Rs.1.00 crore, as stipulated in the One Time Settlement sanction letter dated 13.06.2018, is still due and payable by the borrower.

The discretionary jurisdiction, under Article 226 of the Constitution of India, is exercised only in larger public interest. Even if technical flaws are detected, this Court would still refrain from interference if it is satisfied that larger public interest would be otherwise hampered. While the letter dated 13.06.2018 no doubt, required the documents to be released before payment of Rs.1.00 crore, it also stipulated that payment should be made by 20.06.2018, which the borrower has failed to comply with. By the sanction letter dated 13.06.2018, the respondent-bank communicated its acceptance of the One Time Settlement proposal submitted by the borrower to which the petitioner-guarantor is not a party. It would be wholly inappropriate for this Court to direct the 1st respondent-bank to release the petitioner's property without ensuring that the borrower pays Rs.1.00 crore in terms of the letter dated 13.06.2018.

Sri K.Mallikarjuna Rao, learned Standing Counsel for the 1st respondent-bank, would submit that, even if the petitioner were to pay Rs.1.00 crore within one week from today, the 1st respondent-bank would forthwith release the subject property.

We see no reason to issue a mandamus to the 1st respondent-bank to release the subject property even without safeguarding the interests of the bank, and ensuring that the said sum of Rs.1.00 crore, as stipulated in the letter dated 13.06.2018, is paid. The interests of the petitioner would be adequately safeguarded, if the 1st respondent-bank is directed not to put the subject property to sale for a period of one month from today to enable the petitioner to approach the bank or the borrower, and ensure that the sum of Rs.1.00 crore is paid. Leaving it open to the petitioner to approach the 1st respondent-bank in this regard, or in the alternative to ensure that the borrower pays Rs.1.00 crore in terms of the

letter dated 13.06.2018, the Writ Petition is closed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(D.V.S.S.SOMAYAJULU, J)

22nd October, 2018
JSU

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Writ Petition No.33469 of 2018

Date: 22.10.2018

JSU