THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.33382 OF 2018

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

Heard Sri Deepak Bhattacharjee, learned Senior Counsel appearing on behalf of the petitioner and B.Praveen Kumar, learned Standing Counsel for the first respondent-Bank and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is for a mandamus to declare the action of the first respondent-Bank in initiating proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity) against the petitioner without issuing a valid notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 ("the Rules" for brevity), as arbitrary, illegal, unconstitutional and contrary to the provisions of the SARFAESI Act.

The petitioner, ex-Managing Director of the fourth respondent-company, guaranteed the loan taken by the fourth respondent from the first respondent-Bank. A demand notice, under Section 13(2) of the SARFAESI Act, was issued on 01.01.2018 demanding a sum of Rs.5,45,70,282/-. Pursuant to the reply submitted by the petitioner under Section 13(3)(a) of the SARFAESI Act on 01.01.2018, a recall notice was issued, under Section 13(2) read with Section 13(3) of the SARFAESI Act, on 02.02.2018. Thereafter, the respondent-Bank issued a fresh notice under Section 13(2) of the SARFAESI Act on 09.02.2018, to which the petitioner submitted his reply under Section 13(3)(a) of the SARFAESI Act on 15.03.2018. The respondent-Bank gave its reply thereto on 28.03.2018 and, thereafter, a notice under Section 13(4) of the SARFAESI Act was issued on 30.04.2018. Subsequently, a notice under Rule 8(6) of the Rules was issued on 11.07.2018, a copy of which was received by the petitioner on 15.07.2018. A notice of sale under Rule 9(1) of the Rules was issued on 14.08.2018, and was published on 20.08.2018 fixing the auction date as 25.09.2018.

The only contention urged by Sri Deepak Bhattarjee, learned Senior Counsel appearing on behalf of the petitioner, is that the notice under Rule 8(6) of the Rules was issued on 11.07.2018 stating that an e-auction-cum-sale would be held on any day after expiry of 30 days of the date of notice; and, in the absence of the date and time of the auction being specified in the notice in terms of Rule 8(6)(d) of the Rules, the said notice is *ex-facie* illegal and in violation of the statutory rules and is, therefore, liable to be set aside.

Sri B.Praveen Kumar, learned Standing Counsel for the first respondent-Bank, would however contend, not without justification, that the very object of issuing a notice under Rule 8(6) of the Rules is to enable the borrower/guarantor to repay the debt in its entirety, and redeem the property; Section 13(8) of the SARFAESI Act has been amended to stipulate that the mortgaged property cannot be redeemed after the date of publication of the notice for public auction; the object of Rule 8(6) of the Rules is only to give the borrower/guarantor a reasonable opportunity to repay the debt, and redeem the property; it is not in dispute that the sale notice, under Rule 9(1) of the Rules, specifies the date and time of the auction; and in the absence of any prejudice being caused to the petitioner, this Court would not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the notice under Rule 8(6) of the Rules when, admittedly, a sum of Rs.8,65,58,800/-, with future interest and charges, is due and payable by the borrower.

The petitioner would allege that the requirement of Rule 8(6)(d) of the Rules has not been complied with as the time and place of auction has not been specified in the said notice; and they are therefore entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. While the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, can no doubt be invoked for a statutory violation, it must also be borne in mind that this Court would exercise its discretionary jurisdiction only in larger public interest, and not merely on a technical flaw being pointed out. While the time and place of auction has not been specified in the notice under Rule 8(6) of the Rules, the petitioner has not been able to show how he suffered substantial prejudice thereby, more so when the subsequent notice under Rule 9(1) of the Rules specifies the date, time and place of auction. The fact that a sum in excess of Rs.8.65 crores is still due and payable to the first respondent-Bank is evident from the sale notice, issued under Rule 9(1) of the Rules, dated 14.08.2018. It is not even the petitioner's case before us that they are ready to repay the debt in its entirety, and redeem the property, even now. The very object of issuing the notice under

Rule 8(6) of the Rules is to enable the borrower/guarantor to exercise their right under Section 13(8) of the SARFAESI Act, repay the debt, and redeem the mortgaged property. In the absence of substantial prejudice being caused to the petitioner, we see no reason to exercise the discretionary jurisdiction under Article 226 of the Constitution of India, and interfere with the notice issued under Rule 8(6) of the Rules, more so as the petitioner has an effective alternative statutory remedy of approaching the Debts Recovery Tribunal questioning the validity of such a notice.

Leaving it open to the petitioner to avail their statutory remedy under the SARFAESI Act, of approaching the Debts Recovery Tribunal, 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)

17th September 2018
RRB