

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.37991 OF 2017

Between:

Mr. Daddu Jeetaiah and others

... Petitioners

and

State Bank of India and others

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 5th JANUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

KONGARA VIJAYA LAKSHMI, J

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AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

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<Gist:

>Head Note:

! Counsel for petitioners : Sri Sarosh Bastawala

^Counsel for respondent Nos.1 & 2 : Sri M.Srikanth Reddy

^Counsel for respondent No.3 : --

? CASES REFERRED:

1. (2008) 1 SCC 125
2. W.P.No.39673 of 2015 decided on 06.07.2017
3. (2013) 9 SCC 620
4. (1976) 4 SCC 634
5. (1997) 11 SCC 412
6. 750 F.2d 70 (1984)

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

WRIT PETITION No.37991 OF 2017

ORDER

(per Justice Sanjay Kumar)

The petitioners seek a direction to the State Bank of India and the Advocate Commissioner, appointed pursuant to the order dated 13.10.2017 passed by the learned Chief Metropolitan Magistrate, Cyberabad, Ranga Reddy District, in CrI.M.P.No.853 of 2017, to forbear and desist from taking coercive measures attaching and taking over possession of the plot admeasuring 592 square yards in H.No.2-37, Bahadurpalli Village, Quthbullapur Mandal, Ranga Reddy District, till disposal of M.A.No.26 of 2016 in O.A.No.993 of 2013 by the Debts Recovery Tribunal, Hyderabad.

By order dated 27.11.2017, this Court directed that no coercive measures should be taken by the respondents, opining that the question as to whether the State Bank of India could act upon a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), issued as long back as in the year 2011, required examination.

Counter having been filed by the State Bank of India addressing the merits of the matter, the case is amenable to final disposal at the stage of admission.

Heard Sri Sarosh Bastawala, learned counsel for the petitioners, and Sri M.Srikanth Reddy, learned counsel for the State Bank of India.

The petitioners' case, in brief, is as follows: They obtained a loan of Rs.26,64,000/- from the State Bank of India in the year

2009, which was thereafter declared a non-performing asset in 2010. O.A.No.993 of 2013 was instituted by the bank before the Debts Recovery Tribunal at Hyderabad for recovery of its dues. Recovery certificate dated 05.10.2016 was issued, pursuant to the final order dated 08.10.2015 in the said O.A., quantifying the amount due and payable by the petitioners at Rs.46,62,511/-. Demand dated 26.10.2016 was issued by the Recovery Officer, Debts Recovery Tribunal, Hyderabad, in R.C.No.294 of 2016 in O.A.No.993 of 2013 calling upon the petitioners to pay this amount within a time frame. The petitioners filed M.A.No.26 of 2016 in O.A.No.993 of 2013 under Section 22(2)(g) of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 (for brevity, 'the Act of 1993'), to set aside the final order dated 08.10.2015 passed in O.A.No.993 of 2013 and it is pending consideration.

Long prior thereto, the bank had issued demand notice dated 28.03.2011 under Section 13(2) of the SARFAESI Act after the loan account of the petitioners was declared a non-performing asset on 30.10.2010. The amount mentioned in this demand notice as the outstanding dues was Rs.29,62,408/- as on 28.03.2011. Thereafter, possession notice dated 22.10.2011 was issued under Section 13(4) of the SARFAESI Act read with Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002'), which was published in newspapers on 24.10.2011. The bank filed a petition under Section 14 of the SARFAESI Act before the learned Chief Metropolitan Magistrate, Cyberabad, Ranga Reddy District, in CrI.M.P.No.853 of 2017 to secure physical possession of the properties offered by the petitioners as security interest. Pursuant to the order dated

13.10.2017 passed therein, the third respondent herein was appointed as the Advocate Commissioner to take possession of the petitioners' properties and deliver the same to the bank. According to the petitioners, appointment of the Advocate Commissioner under Section 14 of the SARFAESI Act is irregular and void, being barred by Section 36 thereof and as their set aside petition in M.A.No.26 of 2016 in O.A.No.993 of 2013 is still pending. They also allege that there is no clarity as to the dues payable by them, going by the various proceedings issued by the bank.

The Chief Manager/Authorized Officer of the State Bank of India, Stressed Assets Recovery Branch, Hyderabad, filed a counter. Therein, he confirmed that the petitioners had taken a housing loan to the tune of Rs.26,64,000/- and the same was classified as a non-performing asset on 30.10.2010. Recovery proceedings were initiated under the SARFAESI Act by issuing demand notice dated 28.03.2011, calling upon them to repay the outstanding dues of Rs.29,62,408/- as on 28.03.2011. Failure on their part to do so led to issuance of the possession notice dated 22.10.2011 under Section 13(4) of the SARFAESI Act. S.A.No.574 of 2012 was filed by the petitioners before the Debts Recovery Tribunal, Hyderabad, aggrieved thereby. This securitization application was dismissed for default on 10.06.2013. The petitioners thereupon approached this Court by way of W.P.No.31114 of 2013 and obtained an interim order to redeliver possession. After redelivery of the possession of the secured asset, the writ petition was disposed of on 26.12.2013 directing the petitioners to deposit a sum of Rs.3,00,000/- within a time frame. At that stage, the petitioners filed M.A.No.82 of 2013 to set aside

the order of dismissal for default passed in S.A.No.574 of 2012 but the same was dismissed on 04.09.2014. The bank independently filed O.A.No.993 of 2013 under the Act of 1993 before the Debts Recovery Tribunal, Hyderabad, for recovery of Rs.34,54,719-68 ps. from the petitioners. This O.A. was allowed on 08.10.2015. Recovery certificate dated 05.10.2016 was issued basing thereon quantifying the amount due and payable by the petitioners at Rs.46,62,511-68 ps. The petitioners filed M.A.No.26 of 2016 to set aside the order dated 08.10.2015 allowing O.A.No.993 of 2013 and the same is still pending consideration. As the petitioners failed to clear their outstanding dues, the bank initiated measures under Section 14 of the SARFAESI Act to secure possession of their properties offered by them as security interest.

In relation to the petitioners' allegation that there was no clarity as to the amounts due and payable by them, the Chief Manager stated that the claim of Rs.28,28,129-67 ps. made by the bank was inclusive of interest till 11.04.2016 and legal charges of Rs.67,000/-, after adjusting the payments made by the petitioners; the claim of Rs.46,62,511-68 ps. made by the bank was as per the final order in O.A.No.983 of 2013 and the recovery certificate issued pursuant thereto. Interest was calculated as per the orders of the Tribunal @ 12.45% per annum with monthly rests. The claim put forth before the learned Chief Metropolitan Magistrate, Cyberabad, in the petition filed under Section 14 of the SARFAESI Act, was based on the calculation made after giving credit to the amounts already paid and upon adding interest at 12.45% per annum as per the Order of the Tribunal in O.A.No.993 of 2013; the claim of Rs.23,62,901-26 ps. made by the bank was inclusive of

interest till 28.02.2015, excluding legal charges of Rs.67,000/-; the claim of Rs.32,75,357-43 ps. made by the bank before the learned Chief Metropolitan Magistrate, Cyberabad, was inclusive of interest till 31.08.2017, excluding legal charges of Rs.67,000/-, but including the interest calculated at 12.45% per annum. The Chief Manager pointed out that pendency of M.A.No.26 of 2016 in O.A.No.993 of 2013 before the Tribunal would not bar the bank from independently pursuing the proceedings under the SARFAESI Act, in the light of the law laid down by the Supreme Court in **TRANSCORE V/s. UNION OF INDIA**¹.

As regards the alleged delay on the part of the bank in pursuing the proceedings initiated under the SARFAESI Act, Sri Sarosh Bastawala, learned counsel, placed reliance on **TAHER AHMED SIDDIQUI V/s. THE STANDARD CHARTERED BANK**². That was a case where the demand notice under Section 13(2) of the SARFAESI Act was issued on 13.04.2011 but no steps were taken under Section 13(4) thereof till 23.11.2015. It was in this context that this Court observed that, having issued a demand notice on 13.04.2011 calling upon the borrowers to remit the outstanding dues within sixty days, it was not open to the bank to sleep over the matter for over four years and proceed further on the strength of the said demand notice. This Court opined that as the time stipulated under the demand notice was a limited period of sixty days, necessary measures thereafter had to be initiated by the secured creditor with expedition and within reasonable time and it would not be open to such a secured creditor to sleep over the matter and take further steps after a long lapse of four years.

¹(2008) 1 SCC 125

²W.P.No.39673 of 2015 decided on 06.07.2017.

However, the facts in the case on hand reflect that there was no such delay or inaction on the part of the State Bank of India. The demand notice was issued on 28.03.2011 and the possession notice under Section 13(4) of the SARFAESI Act was issued on 22.10.2011. There was therefore no prolonged delay on the part of the bank as in the case relied upon. Further, it appears that there was litigation thereafter in S.A.No.574 of 2012 and W.P.No.31114 of 2013, on the one hand, and in O.A.No.993 of 2013, on the other. The dates of the orders passed in these cases indicate that there was no inaction whatsoever on the part of the bank in pursuing recovery proceedings. The contention urged by the petitioners in this regard is therefore rejected.

Sri Sarosh Bastawala, learned counsel, would further argue that Section 36 of the SARFAESI Act would have application to the case on hand. This provision mandates that no secured creditor would be entitled to take any measures under Section 13(4) thereof unless the claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (for brevity, 'the Act of 1963').

The facts narrated *supra* manifest that there is no merit in this contention. The loan account of the petitioners was declared a non-performing asset on 30.10.2010. Recovery proceedings under the SARFAESI Act were initiated in March, 2011, and the litigation in relation thereto was pending till September, 2014. In the meanwhile, the bank also initiated independent proceedings under the Act of 1993 by filing O.A.No.993 of 2013 before the Tribunal. This O.A. was allowed on 08.10.2015 and a recovery certificate was issued on the strength thereof on 05.10.2016. The application

under Section 14 of the SARFAESI Act was moved by the bank in July, 2017. In the light of the law laid down by the Supreme Court in **TRANSCORE**¹, it was open to the bank to simultaneously proceed under the provisions of the SARFAESI Act as well as the Act of 1993. Therefore, once it is established that the bank was actively doing so, the question of the law of limitation setting in adversely, in so far as the bank's demand against the petitioners is concerned, does not arise.

Sri Sarosh Bastawala, learned counsel, would further contend that the filing of an application by the bank under Section 14 of the SARFAESI Act has to be in accordance with the limitation prescribed under Article 137 in the Third Division of the Schedule appended to the Act of 1963. He would assert that as the possession notice was issued on 22.10.2011, the petition filed under Section 14 of the SARFAESI Act, being well beyond three years therefrom, would be barred by Article 137.

This argument proceeds on a fundamental fallacy in understanding of the relevant provision. Section 2(b) of the Act of 1963 defines 'application' to include a petition. Section 2(a) defines an 'applicant' to include a petitioner; any person from or through whom an applicant derives his right to apply; and any person whose estate is represented by the applicant as the executor, administrator or other representative. The 'period of limitation' as defined under Section 2(j) is stated to be the period computed in accordance with the provisions of the Schedule to the Act of 1963. The Third Division in the Schedule relates to limitation prescribed for filing of applications. Article 137 thereunder states that for any other application for which no period of limitation is provided

elsewhere in the said Division, the period of limitation would be three years from when the right to apply accrues.

The crucial question however is as to whether an application made by a secured creditor under Section 14 of the SARFAESI Act would be an application within the meaning of Article 137 in Schedule to the Act of 1963. Perusal of the language of Section 14 of the SARFAESI Act reflects that a secured creditor is empowered, for the purpose of taking possession or control of the secured asset, to request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such secured asset is situated, to take possession thereof and forward the same to the secured creditor. The *proviso* thereto demonstrates that any application by a secured creditor is to comply with requirements specified thereunder in clauses (i) to (ix).

In terms of the law laid down by the Supreme Court in **STANDARD CHARTERED BANK V/s. V.NOBLE KUMAR³**, it is clear that the Chief Metropolitan Magistrate or the Chief Judicial Magistrate or the District Magistrate, as the case may be, while exercising power under Section 14 of the SARFAESI Act does not discharge a judicial function. Significantly, all the provisions which find mention in Part-I of the Third Division in the Schedule to the Act of 1963 deal with filing of applications only on the judicial side. It is in that context that Article 137 in Part-II of the Third Division in the said Schedule states that any application for which no period of limitation is provided elsewhere in the Division is covered thereby.

³(2013) 9 SCC 620

On a comprehensive reading of the aforestated scheme, it is clear that only applications on the judicial side would come within the ambit of Article 137 in the Schedule to the Act of 1963 and no application on the non-judicial side, such as one under Section 14 of the SARFAESI Act, would be covered thereby.

THE KERALA STATE ELECTRICITY BOARD, TRIVANDRUM V/s. T.P.KUNHALIUMMA⁴ and ADDL. SPL. LAND ACQUISITION OFFICER, BANGALORE V/s. THAKOREDAS, MAJOR⁵, relied upon by Sri Sarosh Bastawala, learned counsel, are therefore of no avail as these judgments dealt with applications on the judicial side. Similarly, the judgment of the United States Court of Appeals, District Of Columbia Circuit in **TELECOMMUNICATIONS RESEARCH & ACTION CENTER V/s. FEDERAL COMMUNICATIONS COMMISSION⁶** does not advance the petitioners' case. Therein, an observation was made that in the context of a claim of unreasonable delay, the first stage of judicial inquiry would be to consider whether the delay was so egregious as to warrant a mandamus. Elaborating on this aspect, it was further observed that the time agencies take to make decisions must be governed by a 'rule of reason'; where legislature has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; the Court should consider the effect of expediting delayed action on agency activities

⁴(1976) 4 SCC 634

⁵(1997) 11 SCC 412

⁶750 F.2d 70 (1984)

of a higher or competing priority; the Court should also take into account the nature and extent of the interests prejudiced by delay; and the Court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed'. However, as already pointed out *supra*, we find on facts that there was no delay or inaction on the part of the bank in pursuing recovery proceedings against the petitioners in relation to their loan account.

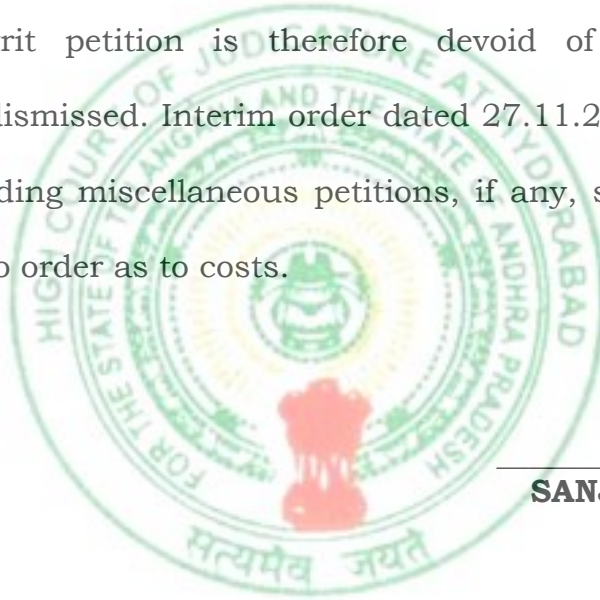
Further, Sri M.Srikanth Reddy, learned counsel, would point out that the petitioners, on the one hand, exchanged correspondence with the bank, promising to clear their entire dues, and on the other, they now allege inaction on the part of the bank for having trusted them to do so. Letter dated 14.11.2014 addressed by the petitioners to the bank is placed on record in this regard, whereunder they undertook to make certain payments within a time schedule and sought a one time settlement. Again, they addressed letter dated 23.02.2015 to the bank promising to settle their loan account amicably. In response thereto, the bank addressed communication dated 05.03.2015 enclosing the upto date account statement so as to enable them to clear the outstanding dues, but with no positive consequence.

On the above analysis, it is clear that the contentions urged by the petitioners do not hold water. There is no ambiguity or lack of clarity on the part of the bank in quantifying the dues payable by the petitioners towards their loan account. Further, this factual dispute, even if established, cannot be redressed by this Court in a writ petition. Admittedly, the petitioners suffered an adverse order in the securitization application filed by them and are yet to

succeed in getting it set aside. However, mere pendency of their set aside petition in O.A.No.993 of 2013 would not bar the bank from proceeding against them under the SARFAESI Act.

As regards the second contention, we find that there was no delay whatsoever on the part of the bank in pursuing recovery proceedings, be it under the SARFAESI Act or under the Act of 1993. In any event, we find that Article 137 in Part-II of the Third Division in the Schedule to the Act of 1963 would not apply to an application filed by a secured creditor under Section 14 of the SARFAESI Act.

The writ petition is therefore devoid of merit and is accordingly dismissed. Interim order dated 27.11.2017 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

KONGARA VIJAYA LAKSHMI, J

5th JANUARY, 2018

**Note: L.R. copy to be marked
(B/O) PGS**