THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No.36275 OF 2017

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioner society in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble High Court may be pleased to give direction more particularly one in nature of Writ of Mandamus, declare that the action of 1st Respondent in initiation of action under Securitization Act for recovery of outstanding dues in spite of settlement of Account under OTS Scheme and receipt of Rs.10,50,000/- and proceeding to take physical possession of the property under Sec.14 of SARFAESI Act as illegal, unwarranted, excessive, arbitrary, unsustainable against law and principles of natural justice and consequently set aside the same and direct the Respondents to honor the OTS accepted by them and to receive the balance amount as per the compromise and also set aside the order dated 22.08.2017 in Criminal M.P.No.221 of 2017 in Criminal M.P.No.377 of 2016 on the file of Assistant Sessions Judge, Kadapa including any action initiated under the SARFAESI Act, 2002 and pass such other and further order or orders to which the petitioner is entitled in the interest of justice."

Sri K.B.Ramanna Dora, learned counsel for the petitioner society, would state that his client addressed letter dated 27.02.2015 to the Vijaya Bank, Kadapa Branch, the first respondent herein, stating that it was willing to settle its loan account by way of a One Time Settlement by paying a lumpsum amount of Rs.59.00 lakh. He would state that the petitioner society paid a sum of Rs.10,50,000/- pursuant thereto but, as the first respondent bank failed to communicate its approval of the One Time Settlement proposal, the petitioner society could not deposit the balance amount before 31.03.2015, as proposed. Learned counsel would further state that it was only when the first respondent bank filed a counter-affidavit in the application filed by the petitioner society in Crl.M.P.No.377 of 2016 before the learned Principal Senior Civil Judge-cum-Assistant Sessions Judge, Kadapa, that the petitioner society came to know about the time stipulation for payment of the One Time Settlement amount.

Sri E.Madan Mohan Rao, learned counsel for the first respondent bank, would however contend that the petitioner society was made aware of the fact that it was required to pay the amount offered by it within a time frame and as it failed to do so, the bank was justified in proceeding further under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

Perusal of the counter-affidavit filed by the first respondent bank before the learned Principal Senior Civil Judge-cum-Assistant Sessions Judge, Kadapa, reflects that the bank stated therein as under:

> "....After due calculation as per the guidelines of Bank, the respondent had suggested the petitioner to pay an amount of Rs.59,00,000/- within 3 months as final settlement. The Petitioner had paid an amount of Rs.10,50,000/- and remaining amount had not paid within the time and subsequently as well."

It is also relevant to note that the petitioner society approached the Debts Recovery Appellate Tribunal, Kolkata, aggrieved by the order dated 15.05.2017 passed by the Debts Recovery Tribunal-II, Hyderabad, in S.A.No.1240 of 2017 and in the body of the appeal petition, the petitioner society stated as follows:

> "....It is further submitted that the applicant has proposed for OTS for total payment of settlement in Vijaya Bank, Hyderabad Rs.59,00,000/- under its letter dated 27.02.2015, for which the respondent bank accepted the said

proposal and accordingly the applicant also deposited Rs.10.5 lacs into the credit of loan account."

The aforestated extracts clearly indicate that the petitioner society was made aware by the first respondent bank as to the exact amount that was required to be paid by it for settling the loan account by way of a One Time Settlement. Significantly, in the letter dated 27.02.2015, the petitioner society mentioned the very same figure as was mentioned by the bank, i.e., Rs.59.00 lakh. The said letter also demonstrates that the petitioner society undertook to remit the balance amount of Rs.57.00 lakh before 31.03.2015. This undertaking was not even subject to further consent of the bank.

In that view of the matter, we are of the opinion that the petitioner society, despite being aware of the time stipulation prescribed for settlement of its loan account by way of a One Time Settlement, failed to adhere to the same. In consequence, there is no illegality in the first respondent bank proceeding further under the provisions of the SARFAESI Act.

The writ petition is therefore devoid of merit and is accordingly dismissed. This order shall however not preclude the first respondent bank from approving any fresh proposal for a One Time Settlement of the petitioner society's loan account in accordance with the relevant norms.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

D.V.S.S.SOMAYAJULU,J

Date: 07.03.2018
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