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

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI

+ WRIT PETITION No.42414 OF 2018

% Date:23.11.2018

Between:

M/s. Mangalagiri Textile Mills Private Limited,
Chinna Kakani, Mangalagiri, Rep. by its Chairman
Dr. Golli Nageswara Rao and another

… Petitioners

v.

$ State Bank of India,
Rep. by its Managing Director,
Mumbai, State of Maharashtra and others.

.. Respondents

! For Petitioners : Mr. J. V. Suryanarayana,
Senior Counsel for
Mr. T. Lakshminarayana

^ For Respondents : Mr. M. Srikanth Reddy

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

<u>WRIT PETITION No.42414 OF 2018</u>

<u>ORDER</u>: ***(Per V. Ramasubramanian, J)***

Challenging the entire proceedings initiated by the issue of 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 Securitisation Act"), followed by a possession notice dated 31.08.2017 and culminating in an auction sale notice dated 17.11.2018, the borrower has come up with the above writ petition.

2. Heard Mr. J. V. Suryanarayana, learned Senior Counsel appearing for the petitioners. Mr. M. Srikanth Reddy, learned Standing Counsel takes notice for the respondents.

3. It appears from the papers that a demand notice under Section 13 (2) of the Securitisation Act, 2002, was issued way back in November 2016. According to the petitioner, the demand notice under Section 13 (2) of the Securitisation Act was dated 04.11.2016, but was actually served on the petitioner on 17.11.2016, after having received a huge amount of payment in between 04.11.2016 and 17.11.2016. The main grievance of the petitioner is that if these payments had been accounted for, the total amount due as on the date of service of the notice under Section 13 (2) of the Securitisation Act would have been less than 20% of the total dues. If as on the date of

demand notice, the dues are less than 20%, no proceedings under the Securitisation Act can be initiated, in view of the mandate of Section 31 (j) of the Securitisation Act, 2002. The contention of the learned Senior Counsel for the petitioner is that after having issued a demand notice without taking note of the provisions of Section 31 (j) of the Securitisation Act, the Authorized Officer of the Bank proceeded further to issue a possession notice under Section 13 (4) of the Securitisation Act on 31.08.2017 and had now gone to the extent of issuing an E-auction notice on 17.11.2018. Hence, it is contended by the learned Senior Counsel for the petitioner that the whole proceedings are vitiated from the point of genesis. In other words, according to the petitioner, there is congenital deformity in the whole proceedings.

4. But, it is seen from the material papers that the petitioner challenged the possession notice issued first on 22.02.2017 and published on 03.09.2017, in an appeal under Section 17 of the Securitisation Act, 2002, in SA No.337 of 2017. Along with the appeal the petitioner filed an application for stay of further proceedings, in I.A. No.1503 of 2017.

5. The Debts Recovery Tribunal, Visakhapatnam passed an interim order on 30.10.2017, in I.A. No.1503 of 2017 in SA No.337 of 2017, granting stay of further proceedings subject to the condition that the petitioner deposited Rs.2.00 crores, within three months.

6. Without complying with the said conditional order, the petitioner moved an application in I.A No.172 of 2018 for extension

of time, to comply with the conditional order. By an order dated 31.01.2018, the Debts Recovery Tribunal allowed the application for extension of time and granted extension till 01.03.2018.

7. Thereafter, the petitioner moved another application in I.A. No.349 of 2018 claiming that they have already approached the Bank for a one time settlement and paid an amount of Rs.20.00 lakhs on 28.02.2018 and that therefore, the interim order should be extended despite partial compliance with the conditional order. The Tribunal was gracious enough to pass an order on 06.03.2018 allowing I.A. No.349 of 2018 and extending the stay up to 05.04.2018. Even thereafter, the petitioner did not comply with the condition.

8. Ultimately, they moved one more application in I.A. No.566 of 2018, for grant of one more month's time. That application was also allowed on 06.04.2018. But, the indulgence shown by the Tribunal, was not made proper use of by the petitioner.

9. Therefore, the Bank was left with no alternative except to issue an E-auction notice dated 17.11.2018. At this stage, unable to go back to the Tribunal which had shown lot of indulgence, the petitioner has come up with the above writ petition, raising a new point taking cover under Section 31 (j) of the Securitisation Act. Therefore, we are of the considered view that the petitioner does not deserve any indulgence. The long rope given by the Debts Recovery Tribunal, from the earliest order of interim stay passed on 30.10.2017, has belied all the hopes of the Bank. When the possession notice under Section 13 (4) of the Securitisation Act is already under

challenge in SA No.337of 2017 and the same is pending before Tribunal, the petitioner is not entitled to come up with a writ petition challenging all the proceedings starting from the demand notice under Section 13 (2) of the Securitisation Act.

9. It is contended by the learned Senior Counsel for the petitioner that the legal issue revolving around section 31 (j) of the Securitisation Act was not raised in SA No.337 of 2017. We do not know how the failure of the petitioner to raise a legal issue before the Tribunal will give a licence to him to come up with a writ petition and ride two horses simultaneously. If at all, the petitioner can file additional grounds of appeal in SA No.337 of 2017 and not come up with a writ petition. Therefore, we see no merits in the writ petition and the writ petition is dismissed.

10. It will be open to the petitioner to raise all issues in the pending appeal before the Debts Recovery Tribunal.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 23, 2018
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