THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.39149 OF 2017

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

The petitioner assails the order dated 09.06.2017 passed by the Debts Recovery Tribunal-II, Hyderabad, in S.A.No.510 of 2017 (old S.A.No.72 of 2013) in so far as it denied the prayer of the petitioner for compensatory costs. A consequential direction is sought to M/s.Pridhvi Asset Reconstruction and Securitisation Company Limited, the respondent herein, to pay compensation of Rs.50.00 lakhs for illegally taking possession of the petitioner's rice mill and dal unit situated at D.No.12-155/65/19/C, Kattakommugudem Road, Srinivas Nagar, Kodad, Nalgonda District.

S.A.No.510 of 2017 (old S.A.No.72 of 2013) was filed with the following prayers:

> "(i) declare that the notice 'Inviting Sealed Tender cum Negotiations for Sale of Assets' dated 26.12.2012 published in 'The Hindu' News paper dated 06.01.2013 fixing the date of opening of the bids on 06.02.2013 by the Respondent against the schedule properties under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and Security Interest (Enforcement) Rules, 2002 as null and void,
>
> (ii) declare that the Notice dated 30.07.2012 issued by the Respondent under Section 13(2) of the SARFAESI Act is premature and the same is illegal and arbitrary,
>
> (iii) declare that the Possession Notice dated 01.11.2012 issued by the Respondent Bank against the schedule properties under Section 13 (4) read with Rule 9 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act and Security Interest (Enforcement) Rules, 2002 as null and void,

(iv) set aside all the measures initiated by the Respondent against the schedule properties under Section 13 (4) of the SARFAESI Act and Rules, 2002,

(v) declare that taking physical possession of the alleged secured assets is illegal and arbitrary and consequently direct the Respondent to re-deliver the schedule property henceforth to the Applicant under the proper inventory and panchanama,

(vi) direct the respondent to pay costs including compensatory costs and damages to the extent of Rs.50 lakhs,

(vii) and pass such other order(s) as the Hon'ble Tribunal deems fit and proper in the circumstances of the case."

By order dated 09.06.2017, the Tribunal allowed the S.A. observing as under:

"i) The Possession Notice dt.01.11.2012 issued u/s.13(4) of the SARFAESI Act, 2002, with respect to the SA schedule properties by the Respondent is hereby set-aside;

ii) Consequently, the Sale Notices dt.26.12.2012, 06.03.2012 and 06.06.2013, issued by the Respondent, including the sale of Item Nos.3, 5, 6 & 9 properties conducted on 10.07.2013, are hereby set-aside;

iii) The Respondent is hereby directed to redeliver the possession of the SA schedule properties to the Applicant within one week after expiry of appeal time;

iv) Both parties shall bear their own costs."

The grievance of the petitioner is that the prayer put forth by it for compensation was not dealt with by the Tribunal and, on the other hand, both parties were directed to bear their own costs.

Ms.Ashwini Reddy, learned counsel representing Mr.B.Chandrasen Reddy, learned counsel for the petitioner, would contend that when the Tribunal was inclined to allow the S.A. holding that the possession notice was liable to be set aside and, in consequence, taking over of possession of the petitioner's rice mill and dal unit was unlawful, it ought to have compensated the petitioner for being divested of possession and enjoyment of the rice mill and dal unit. She would further submit that had the petitioner been permitted to run the mill and dal unit, it would have been able to earn far in excess of the compensation claimed. She would place reliance on communications dated 08.09.2017 received from the Southern Power Distribution Company Limited of Telangana State, wherein the petitioner was called upon to pay the minimum demand amount of Rs.18,19,469/- and 40,68,485/- in respect of service connection Nos.2401404476 and 2401416086 for the period from May, 2013 to August, 2017.

Mrs.V.Dyumani, learned counsel for the respondent, would however counter the aforestated arguments advanced on behalf of the petitioner contending that the petitioner never produced any material before the Tribunal in support of the prayer for compensatory costs and damages. She would further submit that the documents now sought to be relied upon by the petitioner, being communications of September, 2017, cannot be looked into as they emanated after the disposal of the S.A. by the Tribunal.

Perusal of the petition filed in support of S.A.No.510 of 2017 (old S.A.No.72 of 2013) demonstrates that except for making a bald prayer for compensatory costs and damages to the extent of Rs.50.00 lakhs, the petitioner did not make any pleading in support of the same. Having termed the costs as compensatory, it was for the petitioner to demonstrate as to how it was entitled to such costs. The prayer for damages is also required to be supported by adequate pleading and proof. In the present case, admittedly, neither was there any pleading in support of the prayer for compensatory costs and damages nor was any proof produced before the Tribunal in relation thereto. The *post facto* documents dated 08.09.2017 therefore cannot come to the aid of the petitioner at this stage.

Be it viewed from any angle, we find no error having been committed by the Tribunal in not considering the prayer of the petitioner for the liquidated compensatory costs and damages to the tune of Rs.50.00 lakhs.

The writ petition is accordingly dismissed.

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

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SANJAY KUMAR,J

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P. KESHAVA RAO,J

Date: 24.01.2018
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