HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.2355 of 2019

ORDER: (per Hon'ble Sri Justice V.Ramasubramanian)

Aggrieved by the dismissal of an appeal under Section 17 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act 2002"), the borrower has come up with the above Writ Petition.

Heard Ms.Gorantla Sri Ranga Pujitha, learned Counsel for the petitioner. Mr.Srikanth Reddy, learned Standing Counsel takes notice for the respondent – Bank.

The petitioner was sanctioned cash credit limits way back in the year 2011 and they were renewed in the year 2012. In the course of its business, the petitioner issued several bank guarantees to several vendors including the State authorities such as the City Municipal Council, Yadgir, Karnataka State, Kerala Water Authority, Bangalore Water Supply and Sewerage Board etc., After the bank guarantees were invoked by the entities in whose favour the bank guarantees were issued, the account of the petitioner was suddenly declared as Non Performing Asset forcing the bank to issue a demand notice on 09.09.2016 under Section 13 (2) of the SARFAESI Act 2002. It was followed by a possession notice forcing the petitioner to file an appeal in S.A.No.488 of 2018.

In the meantime, the Bank also filed an application in O.A.No.2849 of 2017, under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In the said application, the petitioner claims to have filed a Counter Claim for a sum of Rs.20 Crores.

In the light of the Original Application filed by the Bank and the Counter Claim filed by the petitioner, the petitioner wanted all the measures under the SARFAESI Act, 2002 to be set at naught. But the Tribunal dismissed the appeal on merits, rejecting the contention that the adjudication on the appeal should await the outcome of the Counter Claim.

Therefore, the petitioner has come up with the above Writ Petition.

At the outset, the order impugned in the Writ Petition is amenable to a statutory appeal before the DRAT. Since the petitioner is raising several issues of fact, it would be appropriate for the petitioner first to go before the DRAT.

Though it is contended by the learned Counsel for the petitioner that the issue raised in the Writ Petition, is a pure and simple question of law, which can be decided by this Court itself, without driving the petitioner to DRAT, we do not think the same is acceptable.

Merely because the petitioner has filed a counter claim in the application filed by the Bank under Section 19 of the 1993 Act, it cannot be contended that the measures under the SARFAESI Act 2002 should await the outcome of the counter claim. As we have seen from the pleadings, the counter claim is in respect of the alleged wrong invocation of the Bank guarantees. Therefore, the issue raised in the appeal under Section 17 of the SARFAESI Act 2002 can be independently decided.

Therefore, the Writ Petition is dismissed leaving it open to the petitioner to move the DRAT as against the impugned order. However, the DRT shall endeavor to dispose of the Original Application and the Counter Claim, within a period of four months from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions, if any, pending in the Writ Petition shall stand closed. No order as to costs.

V.RAMASUBRAMANIAN, J

P.KESHAVA RAO, J

11.02.2019
Gsn.