THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.3491 OF 2019

O R D E R
(*Per Sri Justice Sanjay Kumar)*

1. The first petitioner is a proprietary concern and the second petitioner is its proprietress. They are before this Court assailing the order dated 04.02.2019 passed by the Debts Recovery Tribunal-II, Hyderabad, dismissing Securitisation Application No.3 of 2019 filed by them under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act').

2. M/s. Sree Santosh Industries, Hyderabad, a registered partnership firm, the second respondent herein, availed cash credit facilities to the tune of Rs.1,00,00,000/- and a term loan of Rs.1,40,00,000/- from the Central Bank of India, Hyderabad (hereinafter, 'the bank'). M/s. Hari Wood Industries, the third respondent partnership firm, and its two partners, C.Naga Mohan and S.Venkataramana, the fourth and fifth respondents, stood as guarantors. They created a mortgage over the property, being the premises at Plot No.4D, Phase I, IDA, Cherlapally, Ranga Reddy District, belonging to the third respondent firm, in this regard. The first petitioner proprietary concern claims to be a lessee of part of the premises of the said secured asset. It claimed leasehold rights under unregistered lease deed dated 26.03.2016. According to the petitioners, after obtaining the said premises on lease, they made considerable investment by raising structures, installing plant and machinery, etc. Thereafter, they came to know that the property was mortgaged with the bank. While so, M/s.Hari Wood Industries, the third respondent firm, and its partners, the fourth and fifth respondents, executed agreement of sale dated 28.06.2017 in their favour in relation to

1500 square yards of the property. While so, upon default in the loan repayment by the second respondent firm, the bank initiated proceedings under the SARFAESI Act against the property to realize its dues. The bank issued demand notice dated 01.06.2018 under Section 13(2) of the SARFAESI Act. Thereafter, the third, fourth and fifth respondents executed another agreement of sale on 17.09.2018 in favour of the first petitioner proprietary concern in relation to the property in its entirety. The bank secured order dated 24.10.2018 in Crl.M.P.No.722 of 2018 from the learned Chief Metropolitan Magistrate, Cyberabad, under Section 14 of the SARFAESI Act, and took physical possession of the secured asset. S.A.No.3 of 2019 was filed by the petitioners assailing the action of the bank in taking physical possession of the secured asset through the Advocate Commissioner. The Tribunal framed the following points for adjudication:

> 'i) Whether the applicant made out any valid ground to declare the measures initiated by 1st respondent bank in taking physical possession of SA schedule property on 19.12.2018 through Advocate Commissioner Warrant dated 24.10.2018 in CRl.M.P.722/18 issued by the CMM RR Dist. as illegal and arbitrary?
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> ii) To what relief?'

3. Holding against the petitioners on the first point, the Tribunal noted that even as per their own case, only a paltry amount of Rs.35,00,000/- was paid to the vendors out of a total sale consideration of Rs.2.50 Crore and therefore, they could not claim any title or right in the property pursuant to agreement of sales, which were admittedly executed after the mortgage. The Tribunal further noted that the bank had taken physical possession of the secured asset strictly in accordance with the provisions of the SARFAESI Act. The securitization application was accordingly dismissed.

4. The petitioners filed this writ petition assailing the order dated 04.02.2019 passed by the Tribunal. They also sought a consequential

direction to the bank to release the secured asset in their favour. Significantly, in the meanwhile, the bank had issued sale-cum-e-auction notice dated 27.1.2019 proposing to hold the auction sale of the secured asset on 05.03.2019. By order dated 01.03.2019 passed in this writ petition, this Court took note of the fact that the auction scheduled to be held by the bank was on 05.03.2019, with only one working day in between, and permitted the bank to proceed with the said auction but directed it not to confirm the same until further orders, subject to the condition that the petitioners deposit a sum of Rs.2.00 Crore within two weeks.

5. Aggrieved by the condition of deposit, the petitioners approached the Supreme Court, *vide* Special Leave to Appeal (C) No.7065 of 2019. By order dated 14.03.2019, the Supreme Court dismissed the special leave petition but granted extension of time to the petitioners by two weeks to deposit the amount of Rs.2.00 Crore. On 01.05.2019, when this case was taken up for hearing, this Court was informed by the learned counsel for the petitioners that within the extended time granted by the Supreme Court, they had taken demand drafts and pay orders for Rs.2.00 Crore but the learned counsel for the bank claimed that nothing had been paid. As this aspect required further investigation, this Court directed that *status quo* should be maintained. While so, M.A.No.616 of 2019 in I.A.No.49473 of 2019 in SLP (C) No.7065 of 2019 was filed by the petitioners seeking further extension of time by a period of two weeks to deposit the sum of Rs.2.00 Crore. The said M.A. was disposed of by the Supreme Court, *vide* order dated 03.05.2019, allowing two more weeks time to the petitioners to deposit the amount. In terms of the aforestated order dated 03.05.2019, the petitioners had to deposit the sum of Rs.2.00 Crore by 17.05.2019. It is however an admitted fact that no such payment was made. The same situation continues as on date.

6. In the meanwhile, the bank proceeded with auction of the secured asset and M/s.Vital Therapeutics Private Limited, Secunderabad, became the highest bidder at Rs.4,10,73,000/-. It deposited 25% of the bid amount on the same day but due to the interim order passed by this Court, the sale was not confirmed initially. However, owing to non-compliance with the conditional stay order, the bank confirmed the sale and received the entire sale consideration from the auction purchaser. Sale certificate dated 18.04.2019 was also executed by the bank in favour of the auction purchaser. According to the bank, as the petitioners had not removed articles and machinery from the premises of the secured asset, it was not in a position to handover vacant peaceful possession of the same to the auction purchaser. The bank filed vacate stay petitions, viz., I.A.Nos.2 and 4 of 2019, in relation to the initial stay order dated 01.03.2019 and the *status quo* order dated 01.05.2019 respectively.

7. Certain crucial aspects may be noted at this stage:

The auction sale notice dated 27.01.2019 and the consequential sale held on 05.03.2019 were never subjected to challenge by the petitioners, be it before this Court or before the Tribunal. The earlier writ petition filed by them, viz., W.P.No.46712 of 2018, was also in relation to the order dated 24.10.2018 secured by the bank from the learned Chief Metropolitan Magistrate, Cyberabad, in Crl.M.P.No.722 of 2018 under Section 14 of the SARFAESI Act. This writ petition was dismissed as withdrawn on 03.01.2019. The petitioners thereafter approached the Tribunal against the very same order dated 24.10.2018 by way of the subject S.A.No.3 of 2019. Significantly, they did not even seek leave of this Court to approach the Tribunal while withdrawing the writ petition. Having suffered dismissal of the said securitization application, the petitioners then filed this writ petition.

8. As already pointed out *supra*, all that they asked for by way of their main prayer in this case was to set aside the order dated 04.02.2019 passed by the Tribunal in S.A.No.3 of 2019 and a consequential direction to the bank to release the secured asset in their favour. Their interim prayer was to suspend the impugned order dated 04.02.2019 passed by the Tribunal and to consequently direct the bank to release the secured asset, without reference to the order dated 24.10.2018 passed in Crl.M.P.No.722 of 2018 on the file of the learned Chief Metropolitan Magistrate, Cyberabad. That being so, the interim order dated 01.03.2019 directing stay of confirmation of the sale held on 05.03.2019 had no foundation either in the pleadings or in the prayers in this writ petition. Pertinent to note, though this writ petition was filed on 19.02.2019, long after publication of the sale notice dated 27.01.2019, not even a mention was made of it in the writ affidavit.

9. This being one aspect of the matter, the petitioners secured stay of confirmation subject to certain conditions which they admittedly did not fulfill. Be it noted that after the conditional order dated 01.03.2019 came to be passed by this Court in the present writ petition, the petitioners addressed letter dated 08.03.2019 to the bank stating that they had to deposit Rs.2.00 Crore with the bank as per the said order and asked the bank to provide them the account details for deposit of the said amount. In response, the bank, *vide* its reply dated 27.03.2019, informed the second petitioner, the proprietress of the first petitioner proprietary concern, that the Court order did not mention that the amount was to be deposited in the account of M/s.Sree Santosh Industries Limited, the borrower, or in some other account on behalf of the borrower and that it could not accept the deposit into the borrower's account. The bank requested the second petitioner to keep the said amount in her own account with its branch.

10. As the petitioners were third parties to the loan account, this Court cannot find fault with the bank in refusing to divulge the details of the borrower's account to enable the petitioners to make the deposit in the same. However, it must be noted that the bank categorically informed the petitioners that they were at liberty to make the deposit either in the personal account of the second petitioner or in any other account, but despite the same, the petitioners did not choose to do so before expiry of the stipulated time. Notably, it was only after receiving the letter dated 27.03.2019 from the bank that the petitioners approached the Supreme Court by way of M.A.No.616 of 2019 in I.A.No.49473 of 2019 in SLP Civil No.7065 of 2019. Thereby, they sought extension of time to make the deposit but despite being aware of the fact that there was no clear direction as to the account in which the amount was to be deposited, they did not choose to seek any clarification, be it from the Supreme Court then or from this Court when the case was taken up for hearing on 01.05.2019.

11. According to the bank, the second petitioner approached it on 30.03.2019 and showed photocopies of three demand drafts - (1) DD dated 25.03.2019 for Rs.55,00,000/-, (2) DD dated 26.03.2019 for Rs.25,00,000/- and (3) DD dated 30.03.2019 for Rs.20,00,000/-, totaling to Rs.1.00 Crore. The bank asserted that the petitioners never deposited these drafts in either the personal account of the second petitioner as advised by it or in any other account. The bank also placed on record the letter dated 02.05.2019 addressed by the petitioners to its Khairatabad Branch, wherein the second petitioner stated that she was attaching a copy of the order dated 01.05.2019 along with enclosures, being copies of the aforestated three demand drafts. Therefore, even as on 02.05.2019, the petitioners offered to deposit only Rs.1.00 Crore as against the required sum of Rs.2.00 Crore.

12. However, before us, I.A.No.3 of 2019 was filed by the petitioners seeking suspension of the bank's proceedings dated 22.04.2019. Thereby, the bank had called upon the second petitioner and the fourth and fifth respondents to remove their articles from the premises of the secured asset within seven days. Along with the I.A., the petitioners filed photocopies of three cheques issued by ECL Finance Limited drawn on RBL Bank Limited, Mumbai. The details of these cheques are as follows:

1. Cheque No.001392 dated 28.02.2019 for a sum of Rs.1,35,00,000/- in the name of Central Bank of India.
2. Cheque No.001390 dated 28.02.2019 for a sum of Rs.20,00,000/- in the name of the fourth respondent, and
3. Cheque No.001391 dated 28.02.2019 for a sum of Rs.33,43,328/- in the name of the fourth respondent.

However, there is no proof of the aforestated cheque for Rs.1.35 Crore having been presented to the bank or being encashed by it.

13. In effect, the petitioners manifestly failed to comply with the conditional order dated 01.03.2019 passed by this Court in the present writ petition despite obtaining extension of time to do so from the Supreme Court, time and again. In the meanwhile, owing to their failure to comply with this conditional order, much water has flown under the bridge and the bank has already completed the sale transaction to the extent of issuing a sale certificate to the auction purchaser. It is not clear from the record as to whether the said sale certificate has been registered or not. But notwithstanding the same, it is now too late in the day for the petitioners, who are third parties to the bank's SARFAESI proceedings, to stall the same.

14. As regards the validity of the impugned order dated 04.02.2019 passed by the Tribunal in S.A.No.3 of 2019, it may be noted that the only ground urged therein by the petitioners was on the strength of their so-called leasehold rights. However, it is an admitted fact that the said lease

deed was not a registered one. In terms of Section 17 of the Registration Act, 1908, as applicable in the State of Telangana, a lease deed, be it for whatever period and even if it is for lesser than one year, is compulsorily registrable. Further, as per the law laid down by the Supreme Court in HARSHAD GOVARDHAN SONDAGAR V/s. INTERNATIONAL ASSETS RECONSTRUCTION COMPANY LIMITED[1], a lessee under an unregistered lease deed, which is compulsorily registrable, cannot seek to protect his possession thereunder against a secured creditor. In such circumstances, this Court sees no error in the order passed by the Tribunal.

15. On the above analysis, this Court finds no grounds to grant any relief to the petitioners. However, as it is stated that machinery and various articles, including tanks of acid, belonging to the petitioners are still housed in the premises of the secured asset, we deem it appropriate to grant some time to the petitioners to remove the same. Having regard to the photographic evidence of the material lying in the premises, the petitioners are granted six weeks time from today to remove their items of property from the premises of the secured asset.

Subject to the time granted above, the writ petition is dismissed. Interim orders dated 01.03.2019 and 01.05.2019 shall stand vacated. Pending miscellaneous petitions shall also stand dismissed. No costs.

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SANJAY KUMAR, J

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P.KESHAVA RAO, J

______ JULY, 2019

Svv

[1] (2014) 6 SCC 1