HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION Nos.6809 AND 6810 OF 2019

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

Aggrieved by the refusal of the Debts Recovery Tribunal to grant stay of further proceedings including sale and taking over of physical possession, the borrower has come up with the above writ petitions.

2. Heard Mr. S. Laxma Reddy, learned senior counsel appearing for the petitioners, and Mr. M. Srikanth Reddy, learned standing counsel appearing for the respondent - State Bank of India.

3. Aggrieved by the measures taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), the petitioners in these two writ petitions filed appeals in S.A. Nos.27 and 26 of 2019 under Section 17 of the SARFAESI Act. Pending the appeals, the petitioners sought stay of further proceedings in I.A. No.217 of 2019 in S.A. No.26 of 2019 and I.A. No.218 of 2019 in S.A. No.27 of 2019.

4. On 31.01.2019, the Tribunal passed two independent orders in these two applications for stay, granting stay of confirmation of auction subject to the condition that the petitioners deposit 10% of the dues within one (1) week and 15% of the dues within two (2) weeks

thereafter. It appears that on 06.02.2019, the petitioners, in both these writ petitions, deposited 10% of the amount not into the loan account, but into their own current accounts. As a result, the bank did not treat the petitioners to have complied with the conditional order of stay. As a consequence, the bank proceeded further.

5. Therefore, the petitioners, in these two writ petitions, moved fresh applications for stay in I.A. Nos.725 and 727 of 2019 in S.A. Nos.26 and 27 of 2019 respectively. In these applications, the Debts Recovery Tribunal refused to grant any interim order, not on the ground that the petitioners failed to comply with the first part of the condition, but on the ground that the petitioners failed to comply with the condition relating to payment of second installment. Therefore, the petitioners have come up with the above writ petitions.

6. Though the petitioners contended that the first condition imposed by the Debts Recovery Tribunal in its order dated 31.01.2019 had been complied with, the respondent came up with a counter, claiming that the deposit of 10% of the dues into the current account of the petitioners would not tantamount to a deposit as per the conditional order passed by the Debts Recovery Tribunal and, that therefore, the first condition also should be taken to have been not complied with.

7. But, it appears that the current accounts of the petitioners have already been frozen. After the bank initiated measures under Section 13(4) of the SARFAESI Act, loan accounts have been transferred to the Asset Recovery Management Branch. Therefore,

technically, the bank is right in contending that the petitioners ought to have paid these amounts into the loan accounts now with the Asset Recovery Management Branch.

8. But, the *bona fides* of the petitioners in making deposits into their current accounts cannot be suspected, especially, in view of the fact that the current accounts have already been frozen. The order of the Debts Recovery Tribunal also does not specify the account into which the money is to be paid. Therefore, a person who has *bona fidely* made a deposit, within the period stipulated by the Debts Recovery Tribunal, but into a wrong account, cannot be penalized.

9. At the most, the petitioners can be found guilty of not complying with the second condition. But, the petitioners have now come up with two (2) different banker's cheques towards payment of second installment. Unfortunately, these two banker's cheques are also drawn as payable to the Siricilla Branch, where the current accounts of the petitioners are held. It is no doubt true that there is a delay in payment of the second installment. But, it appears from the counter affidavits that the auctions held failed. A fresh auction is proposed to be held on 26.04.2019. In such circumstances, the acceptance of the payment of the second installment would meet the ends of justice from the point of view of both the parties. While the petitioners stand the advantage of contesting the appeal, the bank stands the advantage of retaining the security while recovering 25% of the dues.

10. Therefore, the writ petitions are disposed of to the following effect:

1) The Siricilla Branch of the State Bank of India shall forthwith transfer to the loan accounts of the petitioners, the 10% of the amount deposited by the petitioners into their current account pursuant to the interim order of the Debts Recovery Tribunal dated 31.01.2019.
2) The petitioners shall forthwith deposit the banker's cheques for payment of the second installment also into their current accounts in Siricilla Branch and upon realization of the proceeds of the banker's cheques, the Siricilla Branch shall transfer the same to the loan accounts of the petitioners in the Asset Recovery Management Branch.
3) Upon such transfer, the delay in payment of the second installment shall stand condoned and the petitioners shall be deemed to have complied with the conditional orders passed by the Debts Recovery Tribunal.
4) Upon the transfer being effected, the respondent bank shall allow the petitioners to run the units. However, symbolic possession of the property shall be deemed to be with the bank. The proposed auction on 26.04.2019 will stand cancelled.

As a sequel thereto, Miscellaneous Petitions, if any pending in these writ petitions, stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 10, 2019.
PV