HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

C.C. Nos.581 & 582 OF 2019 in W.P. Nos.6809 & 6810 of 2019
AND
REVIEW I.A. No.2 OF 2019 IN W.P. No.6809 OF 2019 &
REVIEW I.A. No.2 OF 2019 IN W.P. No.6810 OF 2019

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

While the writ petitioner has come up with the two Contempt Applications complaining of willful disobedience of the orders of this Court in two writ petitions, the bank has come up with two applications for review of the judgment rendered in two writ petitions. Therefore, all of them are taken up together for disposal.

2. Heard Mr. S. Rahul Reddy, learned counsel appearing for the borrower, who is the petitioner in the Contempt Applications and Mr. M. Srikanth Reddy, learned counsel for the bank, which is the petitioner in the review applications.

3. The petitioner in the Contempt Petitions, who was the petitioner in the main writ petitions, came up with the above writ petition challenging the order of the Debts Recovery Tribunal refusing to grant stay of further proceedings including sale and taking over physical possession. Those writ petitions were disposed of by this Court by a common order, dated 10.04.2019. The operative portion of the common order reads as follows:

"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."

4. Complaining that despite the writ petitioner complying with the conditions stipulated by this Court, the bank has failed to hand over possession, the borrower has come up with the Contempt Application.

5. Contending that the writ petitioners were not running the unit and that therefore handing over possession back to them, will defeat the rights of the bank, the bank has come up with the applications seeking review of the common order passed on 10.04.2019 in both the writ petitions.

6. Let us first take up the applications for review, so that the apprehension of the bank can be sorted out. In the applications for review, the bank has contended that the writ petitioner had already given the factory premises to a third party without the knowledge of the bank and that the said third party, by name Mr. Anil Kumar, has been running the unit for the past 2-3 years and that therefore putting the writ petitioner back to possession will be detrimental to the security interest of the bank.

7. But, the above averment made by the bank in their review application, is stoutly denied by the writ petitioner in a counter affidavit filed to the application for review. In their counter affidavit to the application for review, the writ petitioner has asserted that they are running the unit and that there is no third party involved.

8. The assertion of the bank that a third party, by name Mr. Anil Kumar, is in possession, is found in the grounds of review, but it is not supported by any material. There is no documentary evidence, except the inspection report submitted by the Officials, who made an inspection.

9. But, on the contrary, the writ petitioner has produced copies of invoices, income tax returns and way-bills. The invoices and way-bills show that the writ petitioner has been running the Unit.

10. In any case, no third party is before this Court seeking possession. Therefore, if by virtue of the orders of this Court, possession is handed over to the writ petitioner, the writ petitioner is liable to answer this Court, if any other contingency arises. Actually, our order to hand over possession, was passed with a view to enable the unit to survive, while ensuring that payments to the bank are also made. Therefore, by its very nature, it was supposed to be an interim arrangement. It follows therefore as a corollary that if a person gets the benefit of an interim arrangement, he should restitute the other party in the event of losing the bottle eventually. To put it differently, in the event the writ petitioners lose their application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before the Tribunal, they are supposed to hand over possession back to the bank, in view of the fact that this is only an interim arrangement. No third party at that time can jump into the fray and seek possession. Once this is made clear and the interest of the bank secured, the bank cannot have any objection to allow the writ petitioner to run the unit and repay the amounts due to the bank.

11. To show their *bona fides,* the writ petitioner is also prepared to allow the bank to appropriate a sum of Rs.35,00,000/- (Rupees

Thirty Five Lakhs Only) now lying in two different current accounts. According to Mr. M. Srikanth Reddy, learned counsel for the bank, the said amount represents subsidies released by the Central Government and that the same was released subject to certain conditions. His apprehension is that if the Central Government later on decides to withdraw the subsidy, the liability may fall on the bank.

12. But, we do not think so. The bank has a lien over the amounts lying in the current accounts. The bank is not expected to trace the source of the money pouring into the current accounts. Even if the Central Government chooses to cancel the subsidy later on, there is no way the Central Government can recover the money from the bank. Therefore, this apprehension is also not well-founded.

13. In view of the above, the present review applications are dismissed. It is clarified that our direction to hand over possession back to the writ petitioners, is only an interim arrangement subject to the final outcome of the appeals pending before the Debts Recovery Tribunal under Section 17 of the Securitization Act in S.A. Nos.26 and 27 of 2019. In the event of the writ petitioner failing in S.A. Nos.26 and 27 of 2019, they are obliged to hand over possession back to the bank. It is only subject to this, that possession is ordered to be handed over to the writ petitioners.

14. Coming to the Contempt Petitions, it is clear from the facts narrated above, that the bank had certain apprehensions. Since the apprehensions are now cleared, the bank is given a week’s time from

the date of receipt of copy of this order to hand over possession to the writ petitioners. The bank is permitted to appropriate the amount of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) lying in the current account of the petitioner.

With this direction, the Contempt Cases are closed, while applications for review are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

June 06, 2019
Mgr