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

REV. PETITION NO.2 OF 2019 IN W.P.NO.32302 OF 2016,

REV. PETITION NO.2 OF 2019 IN W.P.NO.14650 OF 2018,
AND
WRIT PETITION NO.9651 OF 2019

COMMON ORDER

M/s.Manikanta Spinning Mill Private Limited, Sircilla District (hitherto, Karimnagar District), availed loan facilities from the State Bank of India, Sircilla Branch (for brevity, 'the bank'). Default having been committed in repayment, the loan account was declared a non-performing asset. Proceedings were initiated by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), resulting in sale of the secured assets, *viz.*, the plots in H.No.12-5-122 (223.75 square yards) and H.No.12-5-123 & H.No.12-5-124 (total extent of 653.50 square yards), situated at Gopal Nagar, Kamareddy Road, Sircilla District, on 15.09.2016. Thereby, M/s.Sri Sai Enterprises, Sircilla, emerged the highest bidder. Registered Sale Certificate dated 10.11.2017 was also executed in its favour by the bank. The said sale was challenged by Gowda Ramesh, the Managing Director of the borrower company, in W.P.No.32302 of 2016.

2. Before resorting to the aforestated sale, the bank had addressed letter dated 31.03.2016 to the borrower company advising it to settle its dues under a One Time Settlement (OTS) scheme recently brought out by it in manufacturing, trade and services sectors. The borrower company responded positively thereto under letter dated 06.02.2017, long after the sale on 15.09.2016. Thereafter, by its later letter dated 08.02.2017, the bank advised the borrower company that its account was not eligible

under the OTS scheme. Aggrieved thereby, the borrower company filed W.P.No.14650 of 2018.

3. Both these writ petitions came to be dismissed by a Division Bench of the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, *vide* common order dated 13.11.2018. Seeking review of the aforestated common order, the petitioners in these two cases filed applications under Order 47 Rule 1 CPC.

4. As stated earlier, the sale of the secured assets was effected by the bank on 15.09.2016, However, vacant possession of the secured assets was not delivered, constraining M/s.Sri Sai Enterprises, Sircilla, the auction purchaser, to file W.P.No.9651 of 2019 before this Court.

5. Heard Mr.A.Sudershan Reddy, learned senior counsel appearing for Ms.R.N.Padmaja, learned counsel for the review petitioners; Mr.R.Raghunandan, learned senior counsel appearing for Mr.Venugopal Julakanti, learned counsel for the auction purchaser; and Mr.Maruthi Jadhav, learned counsel representing M/s.Pearl Law Associates, learned counsel for the bank.

6. We choose to consider the review applications first as the fate of W.P.No.9651 of 2019 would depend upon the outcome thereof.

7. Perusal of the common order dated 13.11.2018, whereby W.P.Nos.32302 of 2016 and 14650 of 2018 were dismissed, demonstrates the following relevant points: As regards denial of the benefit of the OTS scheme to the borrower company, the Division Bench observed that the right to redeem the secured assets was available only up to the point of sale and as the sale crystallized on 15.09.2016, the question of the borrower company availing any OTS thereafter did not arise. It is on this basis that the Division Bench dismissed W.P.No.14650 of 2018. In so far

as W.P.No.32302 of 2016 was concerned, the Division Bench noted that a conditional stay order was passed therein on 23.09.2016, directing the payment of Rs.30,00,000/- to the bank before 30.09.2016 but the said order was complied with only in part by 29.09.2016. The petitioner therein filed an application seeking extension of time but before any order could be passed thereon, the sale was confirmed and the writ petition itself came to be dismissed for non-prosecution on 08.11.2017. It was restored upon the application of the petitioner therein only on 21.11.2017. The Division Bench also noted that after issuance of the demand notice dated 02.07.2014 by the bank under Section 13(2) of the SARFAESI Act, followed by the possession notice dated 26.12.2014 under Section 13(4) thereof, S.A.No.104 of 2015 was filed by the borrower company before the jurisdictional Debts Recovery Tribunal challenging the said possession notice. A conditional stay order was passed therein by the Tribunal but the same was complied with only in part. S.A.No.104 of 2015 was dismissed for non-prosecution on 19.11.2015, leading to a restoration application being filed by the borrower company. However, the conditional order passed in the said restoration application was also not complied with.

8. It was argued before the Division Bench that the borrower company had discharged its entire loan liability and not a single penny was due and payable by it. However, the Division Bench noted that this was purely a question of fact and if what was claimed by the borrower company was true, it could have approached the Tribunal and established this question of fact by challenging the auction notice. Opining that the High Court would not decide such disputed questions of fact, the Division Bench dismissed W.P.No.32302 of 2016.

9. In the grounds of review filed in W.P.No.14650 of 2018, Gowda Ramesh, the Managing Director of the borrower company, alleged that it was never declared a wilful defaulter and therefore, the question of denying the benefit of the OTS scheme to it was not correct. He also raised the issue of the alleged repayment of the dues in full by the borrower company. The same grounds were urged in the review application filed in W.P.No.32302 of 2016.

10. Be it noted that the review petition in W.P.No.32302 of 2016 was not filed by the borrower company, the writ petitioner therein, but by Gowda Ramesh, its Managing Director, in that capacity. The very maintainability of the review application is therefore suspect.

11. Mr.A.Sudershan Reddy, learned senior counsel, argued that the demand notice under Section 13(2) of the SARFAESI Act was never served. He further argued that valuation of the secured assets sold was not proper as the bank had relied upon an out-dated valuation without undertaking the exercise afresh, prior to issuance of the auction sale notice which resulted in the sale on 15.09.2016. Significantly, neither of these grounds were raised in the review petitions or argued before the Division Bench during the first round of hearing. These were issues that would have been within the knowledge of the borrower company and its Managing Director. It is not even their case that it was otherwise.

12. In any event, Mr.Maruthi Jadhav, learned counsel, would point out that in so far as issuance of the demand notice is concerned, the full particulars were furnished in the counter-affidavit filed in W.P.No.32302 of 2016 and a specific averment was made therein that the said demand notice was duly served on the borrower/mortgagor/guarantor. Learned counsel would assert that despite this clear assertion and filing of several

affidavits thereafter, the borrower company never chose to deny service of the demand notice. Learned counsel would further rely upon the various orders passed in these writ petitions, earlier writ petitions and in the securitization application filed by the borrower company to assert that these review petitions are utterly lacking in *bonafides* as the borrower company and its Managing Director never complied with any conditional order satisfactorily. He would further assert that the very filing of W.P.No.14650 of 2018 on 23.04.2018 challenging the bank's letter dated 08.02.2017, informing the borrower company that it was not eligible under the OTS scheme, was a belated afterthought. Lastly, he would submit that the borrower company never cleared its dues before the sale was effected in September, 2016 and therefore, it could not allege that injustice was done to it on that count. Reference was made by him to the letter dated 24.07.2017 addressed by the bank stating that the balance outstanding due even as on 20.07.2017 stood at Rs.40,07,944/-.

13. We find that the facts, admitted as they are, are telling: The loan facility was sanctioned to the borrower company in May, 2010 and was enhanced to about Rs.90,00,000/- in August, 2011. Upon the loan account being declared a non-performing asset, the bank issued demand notice dated 02.07.2014 under Section 13(2) of the SARFAESI Act requiring the borrower company to pay Rs.90,27,269/- due as on 01.07.2014 along with interest, expenses, costs, charges etc. Possession notice under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'), read with Section 13(4) of the SARFAESI Act, was issued on 26.12.2014. The bank secured an order under Section 14 of the SARFAESI Act from the District Magistrate on 28.02.2015. These measures by the bank were challenged by the borrower company, *vide* S.A.No.104

of 2015, before the jurisdictional Debts Recovery Tribunal at Hyderabad. On 08.03.2015, the Tribunal directed the borrower company to deposit Rs.15,00,000/- in two instalments within a time frame. The borrower company admittedly failed to pay the second instalment within time. It then filed W.P.No.27580 of 2015 challenging the District Magistrate's order dated 28.02.2015. This writ petition was disposed of on 01.09.2015 directing the jurisdictional Tribunal to dispose of S.A.No.104 of 2015. The bank was directed not to take any coercive steps till such disposal. S.A.No.104 of 2015 was dismissed for default on 19.11.2015. Physical possession of the secured assets was taken over by the bank on 07.04.2016. E-auction sale notice dated 04.05.2016 was issued by the bank proposing to hold the auction sale of the secured assets on 06.06.2016. The said sale however failed to materialize for want of bidders. I.A.No.1105 of 2016 was filed by the borrower company in S.A.No.104 of 2015 seeking its restoration. By order dated 20.05.2016, the Tribunal allowed the said I.A. subject to the borrower company depositing Rs.15,00,000/- within four weeks. The bank was given liberty to proceed with the sale of the secured assets in the event it failed to do so. Admittedly, the borrower company did not comply with this order. Notice under Rule 8(6) of the Rules of 2002 was issued by the bank on 04.08.2016 followed by the second e-auction sale notice dated 13.08.2016. The sale thereunder was proposed to be held on 15.09.2016. This sale materialised and M/s.Sri Sai Enterprises, Sircilla, was declared the highest bidder. A sale confirmation letter was issued to it on the very same day, *viz.*, 15.09.2016. The Managing Director of the borrower company then filed W.P.No.32302 of 2016 challenging the said auction sale. This writ petition was filed on 21.09.2016 and was taken up for hearing on admission on 23.09.2016. By an interim order passed on that date, the petitioner was called upon to pay Rs.30,00,000/- by 30.09.2016, failing which the bank was held entitled to proceed with the sale. Admittedly, the petitioner paid only Rs.17,50,000/- by 29.09.2016. He filed an extension petition on 29.09.2016 in W.P.No.32302 of 2016 seeking extension of time by twenty days. The said application was however not taken up on 30.09.2016 and as there was no extension granted on that date, the auction purchaser paid the full sale consideration to the bank. After payment of the sale consideration by the auction purchaser, the petitioner deposited Rs.12,50,000/- on 30.09.2016 itself with the bank. Significantly, this amount was deposited on that day despite the petitioner asking for twenty days time to comply with the order dated 23.09.2016. On 28.06.2017, an order was passed in the writ petition requiring the Managing Director of the borrower company to deposit Rs.20,00,000/- within one week to prove his *bonafides*. This order was not complied with. I.As were filed by way of lunch motions in the writ petitions, whereby the Managing Director sought consideration of his proposal under the OTS scheme and also to extend time to deposit Rs.15,00,000/-, pursuant to the order dated 28.06.2017. Both these reliefs were denied when the Court declined to grant him any order. W.P.No.32302 of 2016 itself came to be dismissed for non-prosecution on 08.11.2017. Significantly, the auction purchaser had filed W.P.No.31018 of 2017 complaining that the bank had failed to issue a sale certificate to it. That writ petition was allowed on the same day, i.e., 08.11.2017. Pursuant thereto, the bank issued sale certificate dated 10.11.2017 to the auction purchaser and registered it on 14.11.2017. The restoration application filed by the Managing Director in Writ Petition No.32302 of

2016 came to be allowed on 21.11.2017. On 23.04.2018, the borrower company filed W.P.No.14650 of 2018 seeking to rake up the denial of the benefit of the OTS scheme by the bank under letter dated 08.02.2017.

14. Given the aforestated sequence of events, it is clear that the borrower company and its Managing Director were active in challenging the proceedings initiated by the bank at every stage. However, it is equally manifest that they were not diligent or serious in complying with the conditional orders at any point of time. There is not a single instance of any order having been complied with in entirety. It is an admitted fact that sale of the secured assets crystallized in a registered sale certificate. It is therefore too late in the day for either the borrower company or its Managing Director to try and raise new grounds relating to pre-sale causes of action, *viz.,* issuance of the demand notice and valuation of the secured assets for determination and fixing of the reserve price.

15. Though Mr.A.Sudershan Reddy, learned senior counsel, would contend that the borrower company cleared its dues in entirety, as rightly pointed out by the Division Bench in the order dated 13.11.2018, this question of fact is not amenable to resolution in a writ petition. All the more so, when the bank asserts to the contrary and contends that there are still outstanding dues. In any event, it is not open to the borrower company to fall back on any payments made after the sale on 15.09.2016. We may note that the right of redemption available to the borrower company ceased to exist once sale of the secured assets materialised. This legal position was affirmed once again by the Supreme Court in DWARIKA PRASAD V/s. STATE OF UTTAR PRADESH[1]. Therefore, this Court cannot permit either the borrower company or its Managing

[1] (2018) 5 SCC 491 = 2018 SCC OnLine SC 183

Director to attempt to turn back the clock after so much water has flown under the bridge. Further, the facts set out *supra* clearly demonstrate that the borrower company and its Managing Director cannot seek such indulgence, having failed to comply with even a single conditional stay order secured by them.

16. As regards denial of the OTS scheme, we find that the very filing of W.P.No.14650 of 2018, long after the issuance of the letter dated 08.02.2017 by the bank, clearly demonstrates that the same was a belated afterthought on the part of the borrower company. By the date of filing of this writ petition, the sale certificate had already been registered in favour of the auction purchaser. Once that event took place, all doors practically stood shut in so far as the borrower company and its Managing Director were concerned in relation to their right of redemption.

17. On the above analysis, we find that no error apparent is made out on the face of the record warranting exercise of review jurisdiction in these two writ petitions. Even on facts, no reasons, sufficient or otherwise, are made out warranting interference with the order under review.

18. The bank stated that though it took possession of the secured assets pursuant to the order obtained by it under Section 14 of the SARFAESI Act, 2002, some third party, who is allegedly in collusion with the borrower company and its Managing Director, encroached upon a part of the secured assets and is causing hindrance to delivery of the vacant peaceful possession of the secured assets to the auction purchaser.

19. In such circumstances, as the bank is duty bound to deliver vacant possession of the secured assets to the auction purchaser, it is directed to take all necessary measures in accordance with law to take over the

possession of the secured assets in their entirety and to deliver possession thereof to the auction purchaser. It shall be open to the bank to approach the District Magistrate and the police officials concerned for all necessary help in this regard. The District Administration and the Police Administration shall extend full assistance to the bank in securing lawful possession of the secured assets so that the same can be made over to the auction purchaser. In the light of these directions, W.P.No.9651 of 2019 filed by M/s.Sri Sai Enterprises, the auction purchaser, is allowed.

20. In the result, the review applications filed in W.P.Nos.32302 of 2016 and 14650 of 2018 are dismissed. W.P.No.9651 of 2019 is allowed. There shall be no order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

02nd AUGUST, 2019

PGS