HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.11914 OF 2019

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

Challenging the conditions imposed by the Debts Recovery Tribunal (DRT) for the grant of stay of further proceedings pursuant to a sale notice, the borrower has come up with the above writ petition.

2. Heard Mr. D. Jagadishwar Rao, learned counsel for the petitioner. Mr. N. Mehar Prasad, learned counsel, takes notice for the respondent bank.

3. Challenging a sale notice, dated 03.05.2019, issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, the petitioner filed an appeal in S.A. No.175 of 2019 before the DRT. Along with the appeal, the petitioner also filed an application in I.A. No.1762 of 2019 for stay of further proceedings.

4. On the said stay application, the Tribunal passed a conditional order which reads as follows:

> "Having regard to the facts and circumstances of the case and in the interest of justice, interim relief can be granted on certain conditions. **Accordingly, there shall be an interim stay of all further proceedings in pursuance of the Prior to Sale Notice dt.03.05.2019, subject to the Petitioner/Applicant depositing 25% of the total outstanding dues as claimed in possession notice in two instalments- 1st instalment of 10% is directed to be deposited within two weeks from the date of this order and 2nd instalment of**

> **15% within two weeks thereafter directly with the Respondent Bank. In the event of failure of compliance of any of the aforesaid conditions by the petitioner, the interim stay shall stand vacated and the Respondent bank shall be at liberty to proceed against the schedule properties in accordance with law**. Post the matter on 12.07.2019 before Registrar for reporting compliance and also for filing vakalat/counter by the Respondent."

5. Challenging the above condition, the borrower has come up with the above writ petition on the short ground that the very classification of the account as a Non-Performing Asset (NPA), was completely contrary to the Reserve Bank of India (RBI) Circular and that without even looking into this fact, the Tribunal imposed an onerous condition upon them. This is a case where, according to the petitioner, no condition could have been imposed by the Tribunal in the light of the fact that the account was not liable to be classified as NPA.

6. We have carefully considered the above submissions. A careful look at the appeal filed by the petitioner in S.A. No.175 of 2019 would show that a demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on 02.05.2018. It is not known whether the petitioner submitted any reply to the demand notice, objecting to the classification of the account as NPA. On the contrary, the petitioner seems to have submitted a letter, dated 20.06.2018, seeking a One Time Settlement. In other words, the point that the account could not have been classified as NPA, was not raised

at the earliest point of time. Therefore, the bank proceeded to issue a possession notice under Section 13 (4) on 10.04.2019. It was followed by the sale notice, dated 03.05.2019.

7. Therefore, the contention that the account could not have been classified as NPA, was tested correctly for the purposes of finding out the existence of a *prima facie* case, by the Tribunal. Once the Tribunal has taken into account all the three parameters, viz., (i) *prima facie* case (ii) balance of convenience and (iii) irreparable hardship, and imposed a condition for the grant of stay, there is no scope for interference with the said discretionary order in a writ petition under Article 226 of the Constitution of India. Therefore, the writ petition is liable to be dismissed.

8. The only concession if at all that can be given to the petitioner is to enlarge the time for payment of the conditions.

9. Therefore, the writ petition is disposed of granting time to the petitioner to make payment of the first installment as ordered by the Tribunal, on or before 30.06.2019, and the second installment on or before 31.08.2019.

10. If the petitioner fails to comply with any of the above conditions, the bank may confirm the auction if already held or proceed with the auction if not already held. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

June 17, 2019
Mgr