

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

WRIT PETITION NOS.13928 AND 14005 OF 2019

COMMON ORDER

(Per Sanjay Kumar, J)

1. Niranjan Vyas, the petitioner in these cases, filed two applications under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), before the Debts Recovery Tribunal-II, Hyderabad (*for brevity*, 'the Tribunal'). He filed SAIR No.164 of 2018 assailing the action of the State Bank of India (*for brevity*, 'the bank') in fixing the reserve price at Rs.3,00,00,000/- for two different properties in the sale notice dated 28.06.2017 which led to the auction sale on 09.08.2017. In SAIR No.165 of 2018, his prayer was to declare the action of the bank in fixing the reserve price at Rs.20,06,00,000/- for five properties in the sale notice published on 21.08.2017, leading to the auction sale on 08.09.2017.

2. Both the securitization applications were filed with delay. I.A.No.3445 of 2018 was filed in SAIR No.164 of 2018 to condone the delay of 282 days in the filing of the securitization application. A similar application, in I.A.No.3447 of 2018, was filed in SAIR No.165 of 2018 seeking condonation of the delay of 252 days in its presentation. By separate orders dated 26.04.2019, the Tribunal dismissed both the applications. Aggrieved thereby, he is before this Court. W.P.No.13928 of 2019 relates to the dismissal of I.A.No.3447 of 2018 in SAIR No.165 of 2018, while W.P.No.14005 of 2019 pertains to the dismissal of I.A.No.3445 of 2018 in SAIR No.164 of 2018.

3. Heard Sri C.B.Ram Mohan Reddy, learned counsel representing Sri M.V.Subba Reddy, learned counsel for the petitioner; Sri Maruthi Jadhav

learned counsel representing M/s.Pearl Law Associates, learned counsel for the bank; Sri S.Ravi, learned senior counsel, and Sri Subramanyam Daraboina, learned counsel, appearing for the auction purchasers, the third respondent in each of these cases.

4. The record reflects that the petitioner earlier approached this Court by way of W.P.No.26480 of 2017 (filed on 07.08.2017) assailing the e-auction sale notice dated 28.06.2017. The auction sale pursuant to this notice was successfully held on 09.08.2017 in so far as the secured residential property at Secunderabad was concerned. It however failed in respect of the secured asset at Muthangi Village, an extent of Acs.6.31 cents. The bank then issued e-auction sale notice dated 21.08.2017 in respect of the unsold secured asset at Muthangi Village along with other properties. Thereupon, the petitioner filed W.P.No.29686 of 2017 (on 31.08.2017) assailing the e-auction sale notice dated 21.08.2017. The auction sale pursuant to this notice was held on 08.09.2017 and the Muthangi property was also sold.

5. Sale certificate dated 18.09.2017 was issued by the bank in favour of the successful auction purchaser, the third respondent in W.P.No.13928 of 2019, in relation to the secured asset at Muthangi Village. The same was registered as Document No.20443 of 2017 on the very same date. Similarly, a sale certificate was issued and registered as Document No.1816 of 2017 in favour of the auction purchaser, the third respondent in W.P.No.14005 of 2019, in relation to the secured residential property.

6. It was only some time thereafter that the petitioner, in his own wisdom, chose to withdraw the two writ petitions. An order was passed to this effect on 16.02.2018, taking note of the submission made by Sri M.V.Subba Reddy, learned counsel, that the petitioner wanted to withdraw

the writ petitions reserving liberty to challenge the concluded auction sales held by the bank by impleading the auction purchasers. The writ petitions were accordingly dismissed as withdrawn with such liberty.

7. However, it was only on 04.04.2018 that the petitioner chose to file W.P.Nos.11656 and 11846 of 2018. In W.P.No.11656 of 2018, the petitioner assailed the action of the bank in fixing one reserve price for five different properties in the auction sale notice published on 21.08.2017 leading to the auction sale on 08.09.2017. He sought a consequential direction to set aside the said sale and the sale certificate bearing Document No.20443 of 2017 issued in favour of the third respondent therein, the auction purchaser of the property at Muthangi Village. By way of W.P.No.11846 of 2018, he assailed the action of the bank in fixing the reserve price at Rs.3,00,00,000/- for two properties in the auction sale notice published on 28.06.2017 leading to an auction sale on 09.08.2017. He sought a consequential direction to set aside the sale certificate bearing No.1816 of 2017 issued in favour of the third respondent therein in relation to the secured residential property.

8. W.P.No.11656 of 2018 was dismissed on 09.04.2018 giving liberty to the petitioner to approach the jurisdictional Debts Recovery Tribunal under Section 17 of the SARFAESI Act. On 10.04.2017, a similar order was passed dismissing W.P.No.11846 of 2018, relegating the petitioner to the statutory alternative remedy. Thereupon, on 18.05.2018, SAIR Nos.164 and 165 of 2018 were filed by the petitioner before the Tribunal. They were returned on 22.05.2018 by the Registry of the Tribunal calling upon the petitioner to clarify as to how they were within limitation. The matters seem to have been placed before the Bench on 12.07.2018 and pursuant to the direction of the Tribunal, the petitioner filed condone delay petitions

in both the securitisation applications only on 24.07.2018. It is in the backdrop of the aforestated factual milieu that the orders passed by the Tribunal, presently under challenge, need to be examined. We may also note that the relief sought in the two securitisation applications is to set aside the sale notice dated 28.06.2017; the consequential auction sale held on 09.08.2017; and the registered sale certificate bearing Document No.1816 of 2017; along with the auction sale notice dated 21.08.2017; the consequential auction sale held on 08.09.2017; and the registered sale certificate bearing Document No.20443 of 2017.

9. At the outset, we may note that the Tribunal did not dismiss the applications on the ground that it had no power to condone the delay in their presentation. It was on merits that the said applications came to be dismissed on 26.04.2019. Having referred to the past litigative history, the Tribunal noted that the petitioner had resorted to file writ petitions, one after the other, though he was aware of the remedy available to him under the SARFAESI Act. The Tribunal pointed out that except for stating that he had approached the High Court by way of writ petitions, no reasons were offered by the petitioner to explain the delay. The Tribunal therefore held that the petitioner had failed to offer sufficient and satisfactory reasons to condone the delay in the presentation of the two applications and dismissed the I.As.

10. In the affidavits filed in support of the condone delay applications in both the securitisation applications, the petitioner stated that he was prosecuting the cases before the High Court and was constrained to approach the Tribunal owing to the orders passed in W.P.Nos.11656 and 11846 of 2018. It is therefore clear that the only reason offered by the petitioner for the delay was the fact that he had approached the High

Court in the first instance. No doubt, the time consumed in prosecuting the writ petitions before the High Court would be liable to be excluded under Section 14 of the Limitation Act, 1963, but the question that arises is whether, even if such benefit is extended to the petitioner, he has sufficiently explained the delay on his part.

11. The details of the litigative history set out *supra* indicate that the petitioner initially filed W.P.No.26480 of 2017 only on 07.08.2017 assailing the auction sale notice dated 28.06.2017. By that date, no doubt, the auction sale which was scheduled on 09.08.2017 had not been held. However, no interim orders were granted in the said writ petition interdicting the sale and it fructified in the successful sale of the secured residential property at Secunderabad. He then filed W.P.No.29686 of 2017 on 31.08.2017 assailing the later auction sale notice dated 21.08.2017. Again, the auction sale scheduled thereunder on 08.09.2017 was yet to be held but no interim orders were passed stalling the said sale. This sale also fructified in the sale of the secured asset at Muthangi Village. No steps were taken by the petitioner to implead the auction purchaser of either property in these writ petitions. In his wisdom, he chose to withdraw both the cases reserving liberty to challenge the concluded auction sales by impleading the auction purchasers. An order to this effect was passed on 16.02.2018 dismissing both the writ petitions with liberty.

12. Surprisingly, the petitioner chose to take no action till 04.04.2018. It was only on that day that he filed W.P.Nos.11656 of 2018 and 11846 of 2018. These writ petitions were dismissed on 09.04.2018 and 10.04.2018 respectively relegating him to the statutory remedy. The petitioner again chose to remain indolent. According to him, the orders passed in both the writ petitions were received by him only on 20.04.2018, but he admittedly

filed both the securitization applications only on 18.05.2018 and that too, without condone delay applications. Even if it was his case that the time taken in prosecuting the writ petitions before the High Court was liable to be excluded while computing the limitation for filing a securitization application under Section 17 of the SARFAESI Act, he necessarily had to seek condonation of the delay by asking for the exclusion of such time while computing the limitation. However, no condone delay application was filed in either of the securitization applications on 18.05.2018 and it was only after extensive communication between the Registry of the Tribunal and the petitioner's counsel that the matter was ultimately placed before the Bench of the Tribunal on 12.07.2018. Pursuant to the direction of the Tribunal on the said day, the petitioner filed condone delay applications only on 24.07.2018. Be it noted that in terms of Section 17 of the SARFAESI Act, a securitization application has to be filed within forty five days from the date of arising of the cause of action. To compound matters further, it may be noted that the orders impugned in these writ petitions were passed as long back as on 26.04.2019 but the present writ petitions were filed only on 08.07.2019. According to the petitioner, copies of the impugned orders were made available on 02.05.2019. There is however no explanation forthcoming as to why the petitioner did not choose to immediately approach this Court thereafter.

13. Though the petitioner banked upon the filing of writ petitions before the High Court as the only ground for explaining the delay in the presentation of the securitization applications, the fact remains that there are periods in between which contributed to the delay and which have not been explained at all. For instance, there is no explanation as to why the petitioner did not take any steps from 16.02.2018, when W.P.Nos.26480

and 29686 of 2017 were dismissed as withdrawn, till 04.04.2018. Again, there is no explanation as to why the petitioner chose to wait till 18.05.2018 to file the securitization applications when W.P.Nos.11656 and 11846 of 2018 were dismissed on 09/10.04.2018. Significantly, even the filing of the securitization applications on that day was defective as no condone delay petitions were filed therewith. It was only on 24.07.2018 that the petitioner finally chose to seek condonation of delay in the presentation of the securitization applications after being directed to do so by the Tribunal upon the objections raised by the Registry of the Tribunal. This being the situation, the carelessness and lack of diligence on the part of the petitioner is further demonstrated by the fact that he did not even choose to approach this Court by way of these writ petitions more than two months after the dismissal of the condone delay petitions on 26.04.2019. It was only on 08.07.2019 that he filed these writ petitions.

14. When the statute imposed a stringent time frame for invoking the statutory remedy, an aggrieved party is expected to be careful and diligent in exercising his right to invoke such remedy. Though in a deserving case, the Tribunal would always have the power to condone the delay in presentation of a securitization application (*see*, PORUS LABORATORY PRIVATE LIMITED V/s. INDIAN BANK, ASSET RECOVERY MANAGEMENT BRANCH, HYDERABAD¹), each case would have to turn upon its own individual facts. In the cases on hand, the lack of care and somnolence on the part of the petitioner are writ large on the face of it. He seems to have moved at his own convenient pace with scant regard for the developments that were taking place owing to his own delay and inaction.

¹ (2018) 4 ALD 488 (DB)

15. As matters stand, the sale certificates issued to the auction purchasers, the third respondent in each of these cases, have already been registered. In the light of the law laid down by the Supreme Court in DWARIKA PRASAD V/ s. STATE OF U.P.², the right of redemption available to a borrower would cease to survive after registration of the sale certificate in favour of the auction purchaser. We are of the opinion that having allowed matters to progress to such a stage, the petitioner must be necessarily held to strictly account for the delay on his part. But, as already noted *supra*, except for citing the filing of writ petitions before the High Court, the petitioner did not even choose to explain his slumber during the intervening periods, referred to *supra*. The lack of *bonafides* on the part of the petitioner in pursuing the litigation is therefore demonstrable and, in our opinion, it is fatal.

16. Though Sri C.B.Ram Mohan Reddy, learned counsel, would place reliance on the observations of the Supreme Court in B.S.SHESHAGIRI SETTY V/ s. STATE OF KARNATAKA³ to the effect that refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated, we are of the opinion that this general principle cannot be applied in the factual scenario obtaining presently in the cases on hand. As already noted *supra*, the petitioner, by his own delay and inaction, contributed to much water flowing under the bridge, whereby the rights of the auction purchasers have already crystallized in registered sale certificates. In consequence, the petitioner cannot be permitted to turn back the clock at this late stage, when he is not even in a position to explain his own lapses. This decision therefore does not advance his case.

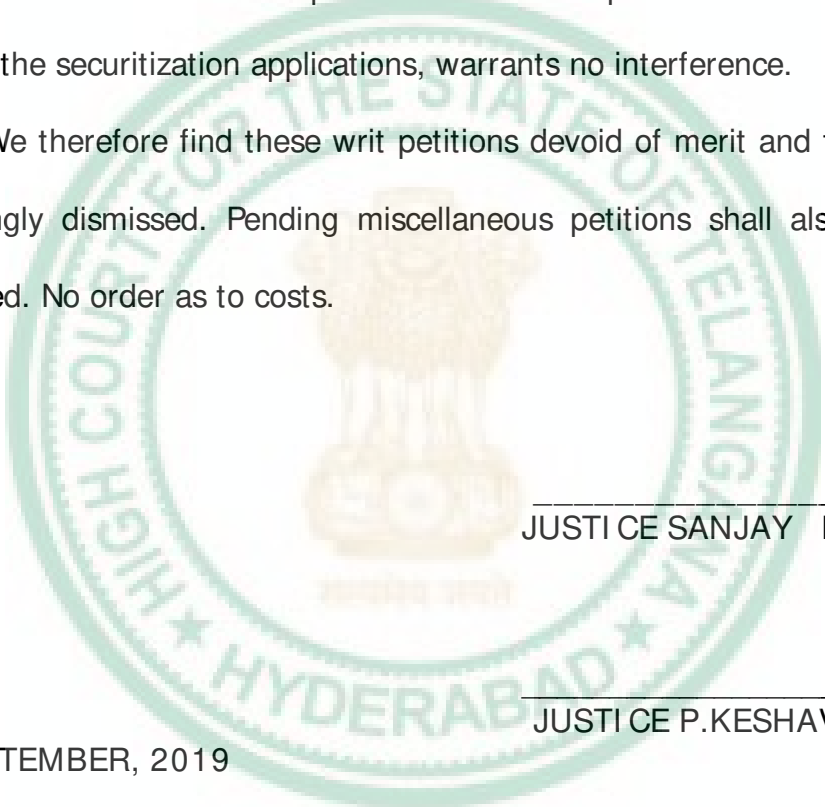
² (2018) 5 SCC 491

³ (2016) 2 SCC 123

17. In this regard, reference may also be made to the observation of the Supreme Court in STATE OF M.P. V/ s. NANDLAL JAI SWAL⁴ to the effect that the High Court, in exercise of its discretion under Article 226, would not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.

18. On the above analysis, though we find that the orders passed by the Tribunal were rather cryptic and were not sufficiently reasoned in the context of the intervening periods of delay, the final conclusion arrived at therein, to the effect that the petitioner had not explained the delay in the filing of the securitization applications, warrants no interference.

We therefore find these writ petitions devoid of merit and they are accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.



JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

6th SEPTEMBER, 2019

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⁴ (1986) 4 SCC 566 : AIR 1987 SC 251