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

WRIT PETITION NO.16021 OF 2019

O R D E R
(Per Sanjay Kumar, J)

1. The petitioner assails the action of the State Bank of India (for brevity, 'the bank') in not considering his representation dated 17.07.2019 and proceeding with the sale of the secured asset contrary to the compromise arrived at between the parties.

2. M/s.Sri Krishna Tractors & Farm Equipment, Tukkuguda, Maheswaram, Ranga Reddy District, a partnership firm, being the third respondent herein, availed loan facilities from the bank to the tune of Rs.2.00 crores. The petitioner stood as a guarantor for the same. Default having been committed in the loan repayment, the loan account was declared a non-performing asset and the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act').

3. However, upon the representation dated 14.07.2016 made by the third respondent firm, the bank issued letter dated 08.09.2016 to it, marking a copy of the same to the petitioner and other guarantors, agreeing to the settlement of the loan by payment of Rs.1.80 crores. The upfront amount of Rs.18.00 lakhs already paid by the third respondent firm was appropriated towards the settlement and a sum of Rs.45.00 lakhs had to be paid immediately. The balance amount of Rs.117.00 lakhs was to be paid before 08.12.2016. The bank undertook to release its charge over the secured properties and other securities on payment of the balance amount of Rs.162.00 lakhs. The bank further stated that if for any reason the compromise amount was not received within the scheduled

period, it reserved its right to cancel the compromise settlement and the entire dues of the bank as claimed before the Debts Recovery Tribunal or the Court, with interest and costs, would become due for payment.

4. It is an admitted fact that payment was not made in terms of the aforestated settlement terms. According to the petitioner, a sum of Rs.1.20 crores was paid out of the total amount of Rs.1.80 crores, as per the settlement terms, but the bank denies it.

5. We may also note that the petitioner, being the guarantor, offered an extent of land admeasuring 535 square yards, with a ground + three floored building thereon, as security for the loan availed by the third respondent firm. G.Narsing Rao, the petitioner's brother, however claimed title over 50% of this property and approached the Debts Recovery Tribunal-II, Hyderabad, by way of S.A.No.552 of 2017 (old S.A.No.345 of 2015) assailing the action of the bank in trying to bring the entire property to sale. The Tribunal however held that as the petitioner's brother only claimed half a share in the property, it was open to him to approach the competent Civil Court in case he desired to assert any right of easement. Thereupon, G.Narsing Rao filed O.S.No.9 of 2019 before the learned X Additional Chief Judge, City Civil Court, Hyderabad, for partition of the property by metes and bounds.

6. It is in these circumstances that the petitioner submitted representation dated 17.07.2019 to the bank proposing to pay the balance amount in terms of the settlement arrived at in the year 2016. He claims to have enclosed a demand draft for Rs.49.00 lakhs, being the balance amount, along with the said representation. In the meanwhile, the bank issued a notice on 01.07.2019, which was published on 21.07.2019 in the newspapers, proposing to hold an auction of the secured assets, including

the property of the petitioner, on 21.08.2019. This led to the filing of the present case.

7. The bank filed a counter-affidavit through its Chief Manager/ Authorised Officer. Therein, he stated that the petitioner was himself a partner of the third respondent firm and therefore, he could not claim immunity from the liabilities of the said firm, by asserting that he was only a guarantor. He pointed out that the loan account of the third respondent firm was declared a non-performing asset, leading to issuance of demand notice dated 24.11.2014 under Section 13(2) of the SARFAESI Act followed by possession notice dated 16.02.2015 under Section 13(4) thereof. The Chief Manager asserted that the petitioner and his brother were in collusion and were attempting to stall the proceedings initiated by the bank to realise its dues. He admitted that the bank was forced to go for a settlement with the third respondent firm and issued the letter dated 08.09.2016 agreeing to settle the loan by accepting the sum of Rs.1.80 crores. He pointed out that this payment was to be made by 08.12.2016. According to him, only a sum of Rs.78,01,439/- was paid by the said date. He denied the averment made by the petitioner that Rs.1.20 crores out of Rs.1.80 crores was paid to the bank on various dates. He stated that the petitioner's representation dated 17.07.2019 was duly considered and rejected, *vide* letter dated 23.07.2019, which was also communicated to the petitioner. A copy thereof was placed on record.

8. No reply-affidavit was filed rebutting the aforestated counter-affidavit averments.

9. Perusal of the said letter dated 23.07.2019 reflects that the bank pointed out therein that the One Time Settlement (OTS) offer had expired

on 08.12.2016 and as the terms of the said settlement had not been acted upon, it was already rejected and that the same was informed.

10. Heard Sri O.Manohar Reddy, learned counsel representing Sri P.Chakravarthy, learned counsel for the petitioner, and Sri Podila Hari Prasad, learned counsel for the bank.

11. Sri O.Manohar Reddy, learned counsel, would contend that as the bank did not reserve its right to continue with the proceedings already initiated under the SARFAESI Act, while communicating the OTS offer under its letter dated 08.09.2016, the proceedings upto that date stood nullified and the bank necessarily had to commence the proceedings afresh from the stage of issuance of a demand notice. He would further contend that as the bank merely reserved its right to cancel the OTS if the payment was not made and there was no evidence of such right having been exercised, the OTS is deemed to be in operation even as on date and the bank ought to have accepted the offer of the petitioner by receiving the balance amount. He would place reliance on the observations made by the Supreme Court in P.VIJAYAKUMARI V/s. INDIAN BANK[1] to the effect that the delay in repayment could be overlooked by awarding interest thereon. He would also place reliance on our earlier judgment in MERAGANI APPA RAO V/s. DEPUTY GENERAL MANAGER-CUM-AUTHORISED OFFICER, IDBI BANK, WEST GODAVARI DISTRICT[2], with regard to the borrower reserving the right to continue the SARFAESI action already initiated, to enable it to do so in the event the OTS failed.

12. We are however not persuaded to agree with these contentions. It is not open to the petitioner to assert that the OTS offered as long back as

[1] 2018 (3) ALD 42 (SC)
[2] 2018 (3) ALD 206 (DB)

in the year 2016 would remain frozen but alive, notwithstanding the failure on the part of the borrower to make payment in terms thereof. The letter dated 08.09.2016 issued by the bank made it clear that the full amount was to be paid by 08.12.2016. When it is an admitted fact that this event did not come to pass, the petitioner cannot claim any right to pay the balance amount due in terms of that settlement at this late stage. Merely because the bank did not take the trouble to properly word the letter, it would not vest the petitioner with any right to claim that the OTS was never cancelled and can therefore be acted upon now. Further, the letter dated 23.07.2019 issued by the bank in reply to the petitioner's letter dated 17.07.2019 states that the OTS offered under the letter dated 08.09.2016 was already rejected and that the same was informed.

13. We may note that the letter dated 08.09.2016 was marked to the third respondent firm and copies thereof were marked to the individual guarantors. Therefore, it is possible that the rejection was communicated directly to the third respondent firm but the same is being suppressed. In any event, the petitioner did not choose to file a reply-affidavit rebutting the claim of the bank that rejection of the OTS offer was communicated.

14. As regards the case law relied upon, we may note that the decision of the Supreme Court in P.VIJAYAKUMARI[1] was in relation to a compromise settled before the Lok Adalat between the borrower and the bank and there was delay on the part of the borrower in making the payment due in terms of such settlement. In these circumstances, the Supreme Court observed that if the agreed amount stood paid though with some delay, condonation of the delay was a possible course of action, if the grounds for the delay justified it. The Supreme Court pointed out that all would depend upon the facts of each case and having regard

to the totality of the facts of that case, it held that the ends of justice would be met if the borrower was made to pay interest along with compensation and costs.

15. As pointed out by the Supreme Court, each case would have to turn upon its own individual facts. In the case on hand, it is nobody's case that the full amount was paid, even with delay. The OTS offer which expired in 2016 itself is now sought to be revived, nearly three years later, by the petitioner on the strength of technicalities. We are of the opinion that it is not open to the petitioner to claim such a right when the letter dated 08.09.2016 made it clear that the entire amount was to be paid by 08.12.2016.

16. As regards the decision in MERAGANI APPA RAO[2], it is no doubt true that the bank in that case took care to mention in the terms and conditions of the settlement that if the borrower failed to honour the OTS, it had the right to continue the SARFAESI action already initiated. No doubt, in the case on hand, the bank did not choose to state so in clear terms. However, that lapse on its part is not enough to nullify the SARFAESI proceedings initiated as long back as in the year 2014. It is not open to a borrower to stultify such proceedings by coming forward with a OTS offer, which it chooses not to honour, and thereafter claim that proceedings must start afresh from scratch. An unscrupulous borrower who resorts to such machinations can effectively defeat proceedings initiated under the SARFAESI Act, time and again.

17. We therefore see no illegality in the bank proceeding further under the SARFAESI Act and issuing a sale notice. Be it noted that the petitioner does not even deny receipt of the reply dated 23.07.2019 addressed to him in response to his representation dated 17.07.2019. Having

suppressed the same, it is not open to the petitioner to come before this Court and seek any equitable relief.

18. The writ petition is devoid of merit on grounds more than one and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE P.KESHAVA RAO

6th SEPTEMBER, 2019

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