* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* THE HON'BLE MS. JUSTICE J. UMA DEVI

+W.P.NO.32302 of 2016
And
W.P.No.14650 of 2018

% Date: 13-11-2018

W.P.No.32302/2016

#Between:

Gowda Ramesh S/o. Bhumaiah,
Managing Director, M/s. manikanta
Spinning Mill Pvt. Ltd., and R/o. H.No.3-36,
Sircilla Mandal, Karimnagar District.

….. Petitioner

And

1. The Authorized Officer, State Bank of India, Sircilla Branch, Karimnagar District.
2. M/s. Sri Sai Enterprises, Registered office at 5-2-42, Main Road, Sircilla, Karimnagar, District, rep. by its Managing Partner Pulluri Srikanth Murthy, S/o. Krishna Murthy, R/o. H.No.5-2-43, Main Road, Pedda Bazar, Sricilla, Karimnagar District.
(R.2 was impleaded as per court order dated 23.06.2017)

…. Respondent

W.P.No.32302/2016

#Between:

M/s. Manikantha Spinning Mills Private Limited,
Rep. by its Managing Director Sri Gowda Ramesh,
R/o. D.No.3-36, Tangalapally Village, Sircilla Revenue Mandal
Rajanna Sricilla District.

….. Petitioner

And

The Authorized Officer,
State Bank of India, Sircilla Branch,
Karimnagar District.

…. Respondent

! Counsel for the Petitioner : Mr. K. Ashok Reddy

^ Counsel for Respondent No.1 : Mr. Maruthi Jadav
For B.S. Prasad.

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> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.32302 of 2016
And
WRIT PETITION No.14650 of 2018

COMMON ORDER: (Per VRS,J.)

While the 1st writ petition is by the Managing Director, the second writ petition is by the borrower-company. The first writ petition challenges the auction sale notice and the second writ petition challenges a communication rejecting the One Time Settlement offer made by the borrower-company on the ground that they were already declared as defaulters.

2. Heard Mr. K. Ashok Reddy, learned counsel for the petitioners in both the writ petitions and Mr. Maruthi Jadav, learned counsel appearing on behalf of the Mr. B.S. Prasad, learned Standing counsel for the Bank.

3. The case on hand has a chequered history. But it is contended by Mr. K. Ashok Reddy, learned counsel for the writ petitioners that insofar as W.P.No.14650 of 2018 is concerned, the controversy lies in a very narrow compass. According to the learned counsel, the history, steeped, in mystery is not relevant for the determination of the controversy raised in the writ petition filed by the borrower-company. Therefore, let us take up W.P.No.14650 of 2018 first for disposal.

4. In the said writ petition, what is challenged is a communication dated 08.02.2017 issued by the Bank rejecting the OTS proposal on the ground that the borrower-company is a willful defaulter. The contention of the learned counsel for the petitioner is that the Reserve Bank of India has issued a Master Circular on the question of declaring the borrowers as willful defaulters and that till date, the borrower-company was not

declared as a willful defaulter and that the procedure prescribed by the Master Circular to declare a borrower as a defaulter was not even followed in the case of the petitioner.

5. We have carefully considered the above submission. At the outset, it should be pointed out that the question of accepting the OTS proposal after the secured asset had been sold, in exercise of the powers conferred by SARFAESI Act, 2002, does not arise. The right to redeem the secured assets is available only up to the point of sale under SARFAESI Act, 2002. What has happened in this case is that a sale has actually taken place on 15.09.2016, a sale confirmation was issued on 15.09.2016 and the sale was challenged by the Managing Director of the borrower-company in the first writ petition, viz., W.P.No.32302 of 2016. Therefore unless the Managing Director succeeds in having the sale set aside, the OTS proposal will not even be available to the petitioner. A person, who has lost his right of redemption, cannot seek OTS, unless it is in respect of any balance amount still due and payable after appropriation of the sale proceeds of the property. Therefore, irrespective of whether there was a formal declaration that the petitioner is a willful defaulter or not and irrespective of whether the Reserve Bank of India Master Circular is followed or not, the borrower-company, which has lost the right of redemption, cannot seek enforcement of OTS through a Writ of Mandamus. Therefore, W.P.No.14650 of 2018 is liable to be dismissed. Accordingly it is dismissed.

6. Coming to W.P.No.32302 of 2016, the petitioner challenges in this writ petition, a sale that took place on 15.09.2016. At the time when notice was ordered in the said writ petition, a conditional order was passed. The conditional order was partly complied with on 29.09.2016.

Thereafter, an application was moved in W.P.M.P.No.41678 of 2016 for extension of time. But before any order could be passed on the application for extension of time, the sale got confirmed. In fact, the writ petition was also dismissed for non-prosecution on 08.11.2017 and thereafter, it was restored on an application in W.P.M.P.No.48019 of 2017 by order dated 21.11.2017.

7. As a matter of fact, the demand notice in this case was issued on 02.07.2014 followed by a possession notice under Section 13(4) on 26.12.2014. Challenging the possession notice, an appeal was filed in S.A.No.104 of 2015. A conditional order of stay was passed, but the same was not complied with, at least partially. Thereafter, the appeal in S.A.No.104 of 2015 itself was dismissed for non-prosecution on 19.11.2015. Though an application in I.A.No.1105 of 2016 was filed for restoring S.A.No.104 of 2015, the conditional order passed in the said application was also not complied with. Therefore, the result is that the measures taken under Section 13(4), challenged by the petitioners in a statutory appeal under Section 17, got confirmed. Hence the further proceedings were only consequential.

8. According to the learned counsel for the petitioner, the entire amount due has already been paid and that not a single penny is now due and payable by the petitioners. This contention is actually a question of fact. The learned counsel also pointed out that in the statement of accounts furnished by the Bank, at one stage, the amount due and payable was indicated as of the year 2017 as Rs.40,00,000/- and that in the OTS proposal they jacked it up to Rs.73,00,000/-. Therefore, according to the learned counsel for the petitioners an innocent borrower,

who had paid money to the last penny, has been taken for a ride by the bank.

9. If what is stated by the petitioners is true, the petitioners should have approached the Tribunal and established these questions of fact challenging the auction notice. This is not the forum where we will decide the disputed questions of fact. Therefore, W.P.No.32302 of 2016 is also dismissed.

10. Accordingly, both the writ petitions are dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

13th November, 2018
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.32302 of 2016
And
WRIT PETITION No.14650 of 2018

13th November, 2018

Js.