

HONOURABLE SRI JUSTICE M. S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos.18781, 19952 AND 22763 OF 2019

COMMON ORDER: *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

The 1st petitioner had borrowed a sum of Rs.1,00,00,000/-(Rupees one crore only) from the 1st respondent and an arbitral award was passed pursuant to the terms of the agreement between the parties on 29.06.2012, directing the 1st petitioner to pay Rs.1,01,71,494.56 ps., with future interest.

2. The 1st petitioner filed Arbitration Application No.177 of 2013 under Section 34 of the Arbitration and Conciliation Act, 1996 on the original side of the Bombay High Court. The said application was dismissed on 20.01.2014.

3. The petitioners challenged the same by way of an appeal in Appeal No.322 of 2014 before the Division Bench of the Bombay High Court. Pending the said appeal, there was a settlement pursuant to which the petitioners undertook to pay the 1st respondent an amount of Rs.1,30,00,000/- (Rupees one crore and thirty lakhs only) in thirteen (13) equal monthly installments of Rs.10,00,000/- (Rupees ten lakhs only) each. The first installment was to be paid on or before 05.08.2015, and the subsequent installments were to be paid by fifth day of each succeeding month. The petitioners agreed that in case of two defaults, the appeal

would stand dismissed and the order dated 20.01.2014 of the learned Single Judge in Arbitration Application No.177 of 2013 would stand revived. The partner of the 1st petitioner also gave an undertaking in terms of the said settlement.

4. It is not in dispute that the said undertaking was never adhered to, and thereby the order of the learned Single Judge in Arbitration Application No.177 of 2013 attained finality since the 1st petitioner did not avail of the installment benefit granted by the Division Bench of the Bombay High Court.

5. Subsequently, the Government of India notified the 1st respondent as a Financial Institution for the purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 05.08.2016.

6. Even prior thereto, the 1st respondent had filed E.P. No.12 of 2014 before the II Additional Chief Judge, City Civil Court, Hyderabad.

7. The said E.P. was transferred to the Court of XXIV Additional Chief Judge, City Civil Court, Hyderabad and re-numbered as CEP No.7 of 2018 and an order was passed on 26.10.2018 directing attachment of the property of the 1st petitioner.

8. C.R.P. No.180 of 2019 was filed by the partner of the 1st petitioner challenging the very filing of CEP No.7 of 2018. The said C.R.P. was dismissed on 03.09.2019.

9. The petitioners had also filed W.P.No.9480 of 2019 challenging the process of recovery initiated by the 1st respondent on the ground that there cannot be recovery under the provisions of Arbitration and Conciliation Act, 1996 as well as SARFAESI Act, 2002. The said Writ Petition was dismissed on 04.07.2019.

10. The 1st petitioner claims to have given a representation on 31.07.2019 to consider a One-Time Settlement and to close the loan account by removing the penalty charges which include the charges for dishonour of cheques issued by the petitioners. No interim order was granted in W.P. No.18781 of 2019 in favour of the petitioners in regard to this plea.

11. Later a notice in Form No.28 was issued on 16.08.2019 under Order XXI, Rule 66 of CPC in CEP No.7 of 2018 by affixing a proclamation of sale dated 16.09.2019 on the secured assets.

12. The petitioners again challenged the same in W.P. No.19952 of 2019 on the ground that the petitioners' offer for OTS had not been considered.

13. Since the earlier settlement arrived at between the petitioners and the 1st respondent before the Bombay High Court had not been honoured by the petitioners, the petitioners cannot, therefore, contend that the fresh offer of OTS made by them should be again considered by the 1st respondent.

14. Therefore, we do not see any reason to grant any relief to the petitioners in W.P. Nos.18781 of 2019 and 19952 of 2019 and accordingly the same are dismissed.

15. The petitioners have also filed W.P. No.22763 of 2019 challenging a sale notice dated 27.09.2019 issued by the 1st respondent under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 by fixing the date of sale as 30.10.2019 again on the ground that the OTS application of the petitioners was not considered by the 1st respondent.

16. In this Writ Petition also, we are not inclined to grant any relief to the petitioners for the reason that the petitioners did not honour the settlement arrived at before the Bombay High Court, which has already been adverted to above. Therefore, we do not find any merit in this Writ Petition also and accordingly the same is dismissed.

17. In view of the above discussion, all the Writ Petitions are dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, in these writ petitions shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

October 29, 2019
KTL/Mgr