HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 36880 of 2018

ORDER: *(per V. Ramasubramanian, J)*

1) Aggrieved by the refusal of the Debts Recovery Tribunal to condone the delay of 120 days in filing an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act"), the guarantor has come up with the above writ petition.

2) Heard Mr.L.Ravichander, learned Senior Counsel appearing for the petitioner and Mr.Ravinder Rao, learned Senior Counsel appearing for the 2nd respondent-bank.

3) The notices to the other respondents are not necessary, as they are borrowers and the property in respect of which the present writ petition is filed, is that of the petitioner.

4) It appears that the 3rd respondent in this writ petition availed credit facilities from the bank for which the petitioner stood as guarantor and also created a mortgage of his property.

5) The 3rd respondent committed default in payment forcing the bank to classify the account as a non-performing asset. Steps were initiated under the Securitization Act, which has

lead to a lot of litigation, mostly at the instance of the petitioner, before the Debts Recovery Tribunal, Debts Recovery Appellate Tribunal and before this Court, and there was no other forum left.

6) Considering the nature of the disposal that we propose to make, of this writ petition, we think it is unnecessary to bring on record the entire history of the litigation, as the same may tire out a reader. Suffice it to say that the successive auction notices were challenged partly successfully and partly un-successfully by the petitioner, either before the Debts Recovery Tribunal or before the Debts Recovery Appellate Tribunal or before this Court. Eventually an auction was held on 13.03.2018; the bank obtained an order under Section 14 of the Securitization Act from the Chief Metropolitan Magistrate on 01.06.2018; they took over possession on 18.07.2018; issued a sale certificate and got it registered on 30.07.2018; and put the auction purchaser in possession on 02.08.2018.

7) In view of these developments, the petitioner chose to withdraw a writ petition filed by him in W.P.No.7692 of 2018, by which he challenged the third auction notice dated 22.02.2018. The petitioner was permitted to withdraw W.P.No.7692 of 2018, by a Bench of this Court by an order dated 25.07.2018, with liberty to go before the Debts Recovery Tribunal.

8) Accordingly, the petitioner went before the Debts Recovery Tribunal and filed an application in SAIR No.253 of 2018 along with an application in I.A.No.3677 of 2018 for condonation of the delay of 120 days in filing the application. Considering the track record of the petitioner, the Debts Recovery Tribunal dismissed the condone delay application by an order dated 28.09.2018. It is against the said order that the petitioner has come up with the above writ petition.

9) Drawing our attention to the long list of litigations that the petitioner initiated from the time a first auction notice was issued on 10.11.2017, Mr.Ravinder Rao, learned Senior Counsel appearing for the bank submitted that the first pre-requisite for considering an application for condonation of delay would be the conduct of a person and therefore apart from the fact that the petitioner did not adduce any sufficient cause, he did not deserve the sympathy of the Court for condonation of delay.

10) Though the learned Senior Counsel appearing for the bank may be justified in bringing to our notice the series of litigation into which the bank was plunged we think that the Tribunal was guilt of non-application of mind in respect of one important aspect. Admittedly the bank took possession of the property on 18.07.2018 pursuant to the order passed by the Chief Metropolitan Magistrate on 01.06.2018 and they put the

auction purchaser in possession on 02.08.2018 after executing a sale certificate and registering the same on 30.07.2018.

11) The application SAIR No.253 of 2018 was filed by the petitioner on 07.08.2018. The reliefs sought in the main application are to be found in para No.6 of SAIR No.253 of 2018 and they are re-produced as follows:

> " <u>Reliefs sought:</u>
>
> In view of the facts mentioned above, the applicant prays that the Hon'ble Tribunal may be pleased to:
>
> i) Declare that the confirmation of sale and sale certificate dated 27.07.2018 issued by the respondent No.1 bank in favour of the respondent Nos.3 and 4 against the schedule property as illegal and arbitrary.
>
> ii) Declare that the auction conducted by the respondent bank on 13.03.2018 in pursuant to the e-auction sale notice 23.02.2018 published on 24.02.2018 against the schedule property as illegal and not as per the procedure stipulated under the Act and Rules, 2002.
>
> iii) Declare that the e-auction sale notice dated 23.02.2018 issued by the respondent bank through the paper publication on 24.02.2018 against the schedule property is arbitrary and illegal
>
> iv) Declare that the 15 days notice under Rule 8 (6) of the Rules, 2002 dated 22.03.2018 issued by the respondent bank against the schedule property is without any justification and the same bad in law.

v) Declare that the schedule property is not a secured asset for the facilities availed by the respondent No.2 or any other entity or body.

vi) Declare that taking physical possession of the schedule property on 18.07.2018 by the respondent bank and handing over to the respondent Nos.3 and 4 is illegal and arbitrary.

vii) Order to re-deliver the property to the applicant with proper panchanama and inventory henceforth.

viii) Set aside all the measures including notices issued under Section 13 (2) and 13 (4) read with Rule 8 and 9 of the Rules, 2002.

ix) Award costs; and

x) Grant any other relief or reliefs as may be entitled to the applicant."

12) A careful look at some of the reliefs sought in the main application would show that only a few of them could be said to be barred by time warranting an application for condonation of delay. Atleast a couple of main reiefs sought, were not barred by time on the date on which the application was filed. The application was filed obviously and admittedly within the period of limitation, insofar as the possession as well as execution and registration of the sale certificate are concerned. Today by dismissing the application for condonation of delay, the Tribunal has dismissed the main application which was within the period of limitation in respect of some substantial reliefs. Therefore the impugned order of

the Tribunal is liable to be *set aside* and the Tribunal directed to number the appeal at least in respect of those prayers which were not at all barred by time on the date on which the application was filed.

13) Therefore, the Writ Petition is allowed. The impugned order shall be treated as confined only to those reliefs indicated in para No.6 of SAIR No.253 of 2018, in respect of which condonation of delay became necessary. The reliefs in respect of which condonation of delay was not even necessary, should be considered by the Tribunal after numbering the application. The Tribunal shall number the application in respect of those reliefs which are not time barred and decide the matter in accordance with law after notice to the concerned parties.

14) As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 18, 2019
gkv

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 36880 of 2018

Date: 18.03.2019

gkv