THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.37229 of 2018

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by the cancellation of one time settlement, the borrower has come up with the above writ petition.

2. Heard Mr. E. Venkata Siddartha, learned counsel for the petitioners and Mr. M. Srikanth Reddy, learned counsel for the respondents.

3. The petitioners availed credit facilities from the respondent bank, way back in the year 2014. The account became a non-performing asset on 28.07.2017.

4. The demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') was issued on 21.08.2017. It was followed by possession notice dated 16.07.2018.

5. In the meantime, the petitioners sought one time settlement, through their letter dated 30.01.2018. The bank declined the offer by a reply dated 01.02.2018.

6. Thereafter, the petitioners made an improved offer on 09.02.2018. The same was accepted by the bank by letter dated 22.03.2018. The amounts payable under the OTS was fixed as Rs.8,22,00,000/-.

7. But, unfortunately, the petitioners failed to comply with the terms of payment during the period from 30.06.2018 and 30.09.2018.

8. The bank appears to have sent letters informing the petitioners that there was no question of renewal of OTS and that if the petitioners wanted, they must submit a fresh OTS proposal. But without taking recourse to the said alternative, the petitioners have come up with the above writ petition challenging the communication dated 01.10.2018 rejecting the request of the petitioners for renewal of original OTS.

9. The above narration of facts would show that the first attempt made by the petitioners for one time settlement, through their letter dated 30.01.2018 failed. But the second attempt made through letter dated 09.02.2018, succeeded, and the bank issued a letter dated 22.03.2018. Unfortunately, the petitioners failed to comply with the terms and condition stipulated in the OTS offer dated 22.03.2018. Under the said letter, the petitioners were granted sufficient time, to make payment. The petitioners were required to make payment on or before 30.09.2018. In other words, petitioners had a full period of six months from the date of OTS letter viz. 22.03.2018. Since the petitioners failed to make payment as per the said letter, the bank cancelled the same.

10. Even thereafter, the bank advised the petitioners to come up with a fresh OTS proposal instead of seeking renewal. Therefore, the petitioners could have availed the said opportunity instead of coming up with a prayer for revival of the original OTS.

11. As we have been repeatedly holding, the one time settlement is a commercial decision taken by the banks in view of various circumstances. The same cannot be tampered with judicially. Therefore, the writ petition is devoid of merits and hence, it is dismissed. However, it will not preclude the petitioners from acting as per the advice of bank for submission of a fresh proposal.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

January 29, 2019
DSK