HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.43063 OF 2018

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

Aggrieved by the judgment rendered by the Debts Recovery Tribunal - II, Hyderabad, in an application filed by the respondent bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the borrowers have come up with the above writ petition.

2. Heard Mr. V.V. Raghavan, learned counsel for the petitioners, and Mr. N.V. Subba Raju, learned counsel appearing for the respondent bank.

3. Before proceeding further, it must be pointed out that the 2nd petitioner herein was an employee of the respondent bank. The 1st petitioner is the son of the 2nd petitioner.

4. The 2nd petitioner, while he was in service, availed a housing loan under the Staff Loan Scheme for the purchase of a property, way back in the year 1982 and he created an equitable mortgage of the said property by the deposit of the title deeds. The 2nd petitioner retired in the capacity of Manager, on attaining the age of superannuation on 30.06.2010.

5. In the year 2002, the 2nd petitioner availed an educational loan for the 1st petitioner to pursue a Degree Course in Engineering in India. As security for the said loan, the 2nd petitioner extended the mortgage over the said property in respect of which a mortgage was already subsisting. The 2nd petitioner also created a lien on his Provident Fund and Gratuity.

6. In the year 2007, the 2nd petitioner got an additional educational loan to the tune of Rs.15.00 lakhs sanctioned to his son (the 1st petitioner herein), for pursuing M.S. in Information Technology at the Melbourne Institute of Technology. The mortgage that was subsisting, was extended even for this additional educational loan.

7. The housing loan availed by the 2nd petitioner under the Staff Loan Scheme was closed in June, 2008. But, the mortgage was not released as the security continued for the two educational loans availed by the petitioners.

8. But, after the retirement of the 2nd petitioner, the account became a Non-Performing Asset (NPA) forcing the bank to issue a demand notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002') on 20.03.2013. It was followed by a possession notice.

9. Simultaneously, the bank filed an application in O.A. No.819 of 2015 on the file of the Debts Recovery Tribunal-I (DRT), Hyderabad. After two years, the same was transferred to DRT-II and re-numbered as O.A.No.676 of 2017.

10. The petitioners entered appearance before the DRT and filed a written statement raising all legal contentions that the 2nd petitioner has perhaps learnt as an officer of the respondent bank. It was virtually a case of *basumasura* testing the boon (loan) granted by the bank. The petitioners raised a very curious contention that the original title deeds deposited by the 2nd petitioner were already lost by the bank and that the bank itself issued a public notice on 08.08.2015 claiming that the title deeds became untraceable. Therefore, the petitioners contended in their written statement that there was actually no mortgage created over the said property, in respect of the two educational loans.

11. Overruling the objections of the petitioners, the DRT passed an order, dated 06.11.2018, directing the issue of a recovery certificate for the recovery of a sum of Rs.38,26,876/-, together with interest. It is against the said judgment of the Tribunal that the petitioners have come up with the above writ petition.

12. The main contention of Mr. V.V. Raghavan, learned counsel appearing for the petitioners is that when the bank itself had

issued a public notice indicating that the original documents of title were lost, there was no question of extending any security by deposit of title deeds. According to the learned counsel for the petitioners, the bank obtained certified copies of the title deeds and it is only on the basis of those certified copies, which were not deposited by the petitioners that the bank claimed a mortgage on the property. Once it is not a case of mortgage, the suit claim was barred by limitation and hence it is contended by the learned counsel for the petitioners that without appreciating the bar of limitation and the absence of any mortgage, the Tribunal passed a judgment blindfold.

13. We have carefully considered the above submissions.

14. The question as to whether the mortgage created on the house property at the time of sanction of the Staff Housing Loan, was extended or not and the question whether there was in fact a mortgage and whether the claim was barred by limitation, are all mixed questions of fact and law. The petitioners have an alternative remedy of appeal as against the judgment of the DRT, to the Debts Recovery Appellate Tribunal (DRAT). When questions of fact are involved, we cannot allow the petitioners to bypass the alternative remedy of appeal. In fact, except making a bald statement in paragraph No.10 of the affidavit in support of the writ petition that they have no efficacious alternative remedy, the petitioners have not even pleaded as to why they are entitled to come up by way of a writ petition under

Article 226 of the Constitution of India. Therefore, we do not wish to exercise the jurisdiction vested in us under Article 226 of the Constitution of India.

15. Hence, giving liberty to the petitioners to approach the Debts Recovery Appellate Tribunal, this Writ Petition is dismissed. If there is any small delay in the petitioners approaching the DRAT, the Tribunal may take a lenient view in the matter of condonation of delay. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

DR. SHAMEEM AKTHER, J

February 20, 2019
Gkv/Mgr