

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO: 18415 OF 2020

Between:

1. Shri, Kailash Chand Gupta, S/o Late Shri Bhagwat Swaroop Gupta, Aged 67 Years, Occ. Business, R/o H. No. 8-2-120/88 and 89/MB, Road No.2, Opp. KBR Park, Banjara Hills, Hyderabad -500034.
2. Shri. Nikhil Gupta, S/o. Kailash Chand Gupta Aged 40 years, Occ. Business, H.No.8-2-120/88 and 89/MB, Road No. 2, Opp. KBR Park, Banjara Hills, Hyderabad -500034.
3. Shri, Nitin Gupta, S/o. Kailash Chand Gupta, Aged 42 years, Occ. business, H.No.8-2-120/88 and 89 Road No.2, Opp. KBR Park, Banjara Hills, Hyderabad - 500034.
4. M/s Musaddilal Constructions and Real Estates Pvt. Ltd., H. No. 8.2-120/88 and 89/MB, Road No. 2, Opp. KBR Park, Banjara Hills, Hyderabad -500034 Rep. by its Managing Director, Mr. Kailash Chand Gupta.
5. M/s. Musaddilal Jewellers Private Limited (MJPL), Shanti Kiran, H.No. 8-2-120/88 and 89/MB, Road No. 2, Opp. KBR Park, Banjara Hills, Hyderabad - 500034. Rep. by its Managing Director, Mr. Nikhil Gupta.

...PETITIONERS

AND

1. The State Bank of India, Rep. by its Authorized Officer, D. No. 6-2-915, 5th Floor, HMWSSB Compound, Khairatabad SAM Branch, Hyderabad.
2. Shri. Nikhil Gupta, S/o. Kailash Chand Gupta Aged 40 years, Occ. Business, H.No. 8-2-120/88 and 89/MB, Road No. 2, Opp. KBR Park, Banjara Hills, Hyderabad -500034.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus to declare the action of the Respondent bank in issuing the demand notice dt. 23/01/2020 under section 13(2) and possession notice dt. 24/09/2020 under section 13(4) of the SARFAESI Act to the Petitioners is illegal, arbitrary, violative of the principles of natural justice and violative of the provisions of the SARFAESI act and the rules framed there under and against the settled principles of law and consequently set aside the same.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings pursuant to the possession notice dt. 24/09/2020 issued under section 13(4) of the SARFAESI Act., pending disposal of the writ petition.

Counsel for the Petitioners: SRI. CHANDRASEN LAW OFFICES

Counsel for the Respondent No.1: SRI A. KRISHNAM RAJU

Counsel for the Respondent No.2: NONE APPEARED

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE T.VINOD KUMAR**
WRIT PETITION No.18415 of 2020

ORDER: *(per Hon'ble Sri Justice T. Vinod Kumar)*

This writ petition is filed assailing the action of the respondent bank in issuing demand notice dated 23.01.2020 under Section 13(2) and possession notice dated 24.09.2020 under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), as being illegal, arbitrary, violative of principles of natural justice and contrary to the provisions of the SARFAESI Act and the Rules made thereunder.

2. Heard learned counsel for the petitioners and Sri A.Krishnam Raju, learned counsel appearing for the respondent bank.

3. It is contended that the 5th petitioner is in the business of buying, selling and manufacture of gold jewelry, and had availed credit facility in the form of financial assistance and other facilities from the respondent bank. Initially the credit facility was availed by the 5th petitioner in the year 2008 in a sum of Rs. 35 crores and having regard to the regularity in repayment, the respondent bank enhanced the said financial facility over a period of time by periodical renewal and stood at Rs. 80 Crore as on 01.03.2018. In respect of such financial facility extended, 1st to 4th petitioners stood as guarantors. The said credit facility extended to the 5th petitioner was secured by creating mortgage of gold and jewelry; mortgage of immovable properties by the 1st to 4th petitioners by deposit of title deeds and equitable mortgage. The value of the assets of the petitioners which are secured for the financial facility of Rs. 80 crore

extended are worth over Rs. 120 crores. It is contended that though the respondent bank during the year 2018-19 had reduced the limit of financial assistance extended to Rs.65.00 crores, the assets secured remained the same and the value of such secured assets of the petitioners are worth more than double the financial facility extended to the 5th petitioner.

4. It is further contended that the 5th petitioner made regular payments towards its account till 31.03.2019; its only due to untimely seizure of assets by the Enforcement Directorate (ED) in April, 2019, the 5th petitioners business activities were shut down and the bank accounts frozen and as such no fault can be attributed either to the 5th petitioner or its director who stood as guarantors to the financial assistance extended. The respondent bank was fully aware of the various proceedings pending before the Appellate Authority against the proceedings initiated by the ED authorities, as the respondent bank is also a party in all the said proceedings. Further, as the respondent bank has adjusted the Fixed deposit of Rs. 1.51 crore as on 31.12.2019 by exercising right to set off, the 5th petitioner account became regular account. Thus, the respondent bank could not claim that the 5th petitioner account as having become Non Performing Asset (NPA) much less from 29.05.2019 as claimed in Notice dated 23.01.2020 issued under Section 13(2) of the SARFAESI Act. It is also contended that the action of the respondent bank in classifying the 5th petitioner account as NPA within 60 days is contrary to the norm of 90 days prescribed by Reserve Bank of India (RBI). Since, classifying the 5th petitioner account as NPA and issuing notice u/s. 13(2) of the SARFAESI Act, being invalid, the subsequent notice dated 24.09.2020 issued u/s.

13(4) is also invalid and both the proceedings have been issued in a mechanical manner.

5. In the course of arguments, though no plea is taken in the affidavit, it is contended that the 5th petitioner, upon being issued with arrangement letter dated 01.03.2019 reducing the existing sanctioned limit of Rs.65.00 crores to Rs.55.00 crores by the respondent bank, has addressed letter dated 12.03.2019 for phased reduction of the sanctioned limit over a period of one year and also gave two proposals therein in relation to the reduction of limits and sought for favourable consideration of the same by the respondent bank. It is contended that pending consideration of the above request made by the 5th petitioner, the respondent bank did not give effect to the reduction of sanctioned limit as indicated in the Arrangement Letter dated 01.03.2019, as the 5th petitioner was permitted to operate and utilize the existing financial facility. Further, it is also claimed that the respondent bank acted in consonance with one of the proposal contained in the letter dated 12.03.2019, whereby a immediate reduction of Rs. 2 crore was suggested by the 5th petitioner, which is duly reflected in the account statement as on 22.03.2019 showing the reduction in drawing power from Rs. 65 crore to Rs. 63 crore. On the basis of the above it is contended that the action of the respondent bank in declaring the 5th petitioner account as having become NPA on 29.05.2019, on the ground of failure to regularize the same to bring it within the sanctioned limit of Rs. 55 Crore w.e.f 01.03.2019, is an unilateral action and is in violation of principles of natural justice.

6. On behalf of the respondent bank, counter-affidavit has been filed opposing the claim of the petitioners. It is contended that the respondent

bank has strictly adhered to the guidelines issued by RBI in its circular dated 01.07.2016, while declaring the petitioners' account as NPA. It is also contended that the petitioners had approached this Court with unclean hands by resorting to suppression; the Arrangement Letter wherein the reduction in the sanctioned limit from Rs.65.00 crores to Rs.55.00 crores w.e.f. 01.03.2019 was effected had been communicated to the 5th petitioner under acknowledgement. Thus, the claim of the petitioners that the respondent bank had violated the principles of natural justice in reducing the limit without informing the petitioners, is denied. The fact of the petitioners being aware of the reduction of the sanctioned financial assistance is also borne out from the letter dated 12.03.2019 addressed by the 5th petitioner, whereby the 5th petitioner itself has given two proposals and thus, it is not open for the petitioners to contend that the reduction of the limit from Rs.65.00 crores to Rs.55.00 crores was resorted to by the respondent bank unilaterally and the petitioners not being informed of the same.

7. The respondent bank further contended that upon the 5th petitioner being communicated of the reduction in the financial assistance in a sum of Rs.10.00 crores, submitted letter 12.03.2019, seeking such reduction in a phased manner. Upon receiving the said request letter from the 5th petitioner, the respondent bank has forwarded the same to the competent authority to consider the request of the 5th petitioner. Though such a request was made by the 5th petitioner, the same would not confer any right on the petitioners to claim that the reduction in the limit was not given effect to by the respondent bank.

8. Since, the request made by the 5th petitioner for reduction in sanctioned limit of financial assistance in phased manner reduction was

under consideration, the respondent bank allowed certain payments from the 5th petitioner account under cash credit facility and the petitioners are only trying to take advantage of the drawing power being shown in the computer system to claim that the respondent bank did not, in fact, effect any reduction of the sanctioned limit.

9. It is also contended that since, the 5th petitioner was informed of the reduction in sanctioned limit from Rs.65.00 crores to Rs.55.00 crores under the arrangement letter dated 01.03.2019, it is mandatory to have the account regularized by repaying the excess amount drawn over and above Rs.55.00 crores within a period of 90 days. As the 5th petitioner had failed to repay the amount drawn in excess of sanctioned limit of Rs. 55 crore, within the time stipulated, the account has been classified as NPA upon expiry of 90 days i.e. on 29.05.2019, and was declared as 'out of order status' as specified in para 2.2 of RBI Master circular dated 01.07.2016 dealing with declaration of NPA account. The RBI circular dated 23.05.2020 is Covid-19 Regulatory Package and is not applicable to the 5th Petitioner account since the same had become NPA on 29.05.2019 itself, much prior to the onslaught of Covid-19.

10. It is also further contended that since, the gold jewellery on which a charge has been created in favour of the respondent bank having been seized by the Enforcement Directorate, the primary security offered by the 5th petitioner for the above said financial assistance extended was not available and accordingly, the drawing power has been withdrawn on 29.05.2019. Even though the 5th Petitioner account had become NPA on 29.05.2019, the respondent bank did not initiate any action till January, 2020, during which time the petitioner could have made the repayment, the benefit of which the 5th petitioner failed to avail.

11. It is also contended by the respondent bank, that the 5th petitioner was informed of the rejection of the proposal made vide letter dated 12.03.2019, by the competent authority at its committee meeting held on 16.04.2019, by letter dated 22.04.2019. Thus, the reduced sanctioned limit of financial assistance from Rs.65.00 crores to Rs.55.00 crores became effective from 01.03.2019 and the same was always in the knowledge of the 5th petitioner, as mere submitting a request for phased manner reduction cannot be construed as the arrangement letter not having been acted upon or given effect to. The action of the respondent bank in permitting the 5th petitioner to draw the amount in excess of the sanctioned limit, pending consideration of its request for a phased manner reduction over a period of one year, cannot be taken advantage by the petitioners now; that the petitioners have effective alternative remedy of approaching the Debts Recovery Tribunal against the action of the respondent bank; and thus, the petitioners should not be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Further, it is also contended that even if a later date is to be considered as the date of intimation of reduction in sanctioned limits, even then the 5th petitioner's account would continue to be an NPA, as it is not the case of the 5th petitioner that it had regularized the account thereafter.

12. In support of the above submission, learned counsel for the respondent bank has placed reliance on the decisions of the Apex Court in ***United Bank of India v. Satyawati Tondon and Others***¹ and ***Agarwal Tracom Private Ltd v. Punjab National Bank and Others***².

¹ (2010) 8 SCC 110

² (2018) 1 SCC 626

13. Having given due consideration to the submissions made on behalf of the respective parties, it is to be seen that the respondent bank having regard to the financial assistance availed and turnovers scored by the 5th petitioner during the previous years had effected the reduction in sanctioned limit from Rs.65.00 crores to Rs.55.00 crores and informed the same to the 5th petitioner by issuing "Arrangement Letter" dated 01.03.2019, which has been duly served on the representative of the 5th petitioner as evidenced from the endorsement made thereon.

14. It is also to be seen that the 5th petitioner upon receipt of the "Arrangement Letter" issued by the respondent bank, vide letter dated 12.03.2019 had sought an year time to bring down the sanctioned limit in phased manner from Rs.65.00 crores to Rs.55.00 crores, by making two proposals as detailed in the said letter. The said request letter addressed by the 5th petitioner dated 12.03.2019, was placed before the competent authority of the respondent bank for consideration at its meeting held on 16.04.2019, whereat the competent authority had declined to accede to the request of the 5th petitioner with regard to the phased manner reduction of sanctioned limit of financial assistance.

15. The out come of the decision of the competent authority was communicated to the 5th petitioner by the respondent bank vide its letter dated 22.04.2019. Thus, till the said date the 5th petitioner can be said to be under hope of his request for phased manner reduction in sanctioned limit being considered favourably. It is only upon issuing of letter dated 22.04.2019, the 5th petitioner knew for sure that the reality he is required to face with, of reduction in sanctioned limits of financial assistance by Rs. 10 crore. In the letter dated 22.04.2019 issued by the respondent bank it is stated that "***we hereby advise that the Competent Authority has***

not approved your request and the reduction in limits is effective immediately (emphasis supplied by court)." A plain reading of the

above content of the letter, would only go to show that the reduction in sanctioned limits as per "arrangement letter" dated 01.03.2019 was not given effect to immediately upon its issuance, till the request of the 5th petitioner was considered and rejected by the competent authority.

16. The above view gets credence from the fact that, if only the respondent bank had given effect to the reduced limits of Rs. 55 Crore of financial assistance from 01.03.2019, the 5th petitioner could not have been allowed to utilize the financial assistance in excess of the said sanctioned limit. It is an admitted fact that as on 01.03.2019, the 5th petitioner had over drawn beyond the sanctioned limit of Rs. 55 crore and would be required to repay the excess drawn amount in order to have the account regularized and till such time drawing power remains frozen. Despite, the 5th petitioner account having been already overdrawn by 01.03.2019, the respondent bank allowed the 5th petitioner to further utilize the financial assistance without curbing the drawing power, till the competent authority rejected the request made by the 5th petitioner under its letter dated 12.03.2019, would only go to show that the respondent bank did not give immediate effect to the reduction in sanctioned limit as per "Arrangement letter" dated 01.03.2019, as claimed.

17. Another aspect, which also merits consideration in support of the petitioners contention, is the fact, if the respondent bank had given effect to the reduced limits immediately, though the same may not be correctly reflected in the online account statements obtained using internet banking facility, as claimed, the drawing power as shown would have to be either Rs. 65 crore (pre) or Rs. 55 crore (post), but not Rs. 63 crore, as shown

on 22.03.2019. The reduction of Rs. 2 crore in the drawing power from the previous sanctioned limit of Rs. 65 crore, is as per the one of the proposal made by the 5th petitioner in its letter dated 12.03.2019 seeking phased reduction.

18. The cumulative effect of the above findings would lead to inevitable conclusion, that even the respondent bank did not act upon the reduction in sanctioned limit as per "Arrangement Letter" dated 01.03.2019, immediately, as being claimed and on the contrary was adopting an accommodative approach towards the 5th petitioner. It is only when the Competent Authority did not approve the request of the 5th petitioner for phased reduction of sanctioned limit, the respondent bank had given effect to the same and informed the 5th petitioner that the reduced limits is effective immediately, as stated in letter dated 22.04.2019. Thus, the reduced sanctioned limit of Rs. 55 crore financial assistance extended to the 5th petitioner would become effective only from the said date and not before viz., 01.03.2019 as being claimed.

19. For the purpose of classification of the 5th petitioner's account as NPA, due to failure to repay the excess amount drawn over the sanctioned limit beyond the period of 90 days, the same has to be reckoned from 22.04.2019. Thus, the claim of the respondent bank that on 29.05.2020, upon expiry of 90 days from 01.03.2019, the 5th petitioner account having become NPA, as the 5th petitioner failed to have the account regularized, is without substance and is liable to be rejected.

20. Since, the challenge to the declaration of 5th petitioner account as NPA, is found to be valid, the subsequent proceedings initiated by the respondent bank on the basis of the above viz., the issuance of demand

notice u/s 13(2) and possession notice U/s. 13(4) of the SARFAESI Act, also would become invalid.

21. Lastly, on the submission by the learned counsel for the respondent bank on alternative remedy provided under the SARFAESI Act, suffice to state that, a co-ordinate bench of this court in a recent judgement rendered in the case of **Shaik Janimiya v. SBI**³ had considered in detail the catena of decisions including the judgement rendered by the Apex court in the case of **Satyawati Tondon (supra)** and held that existence of alternative remedy is not an absolute bar for exercising jurisdiction by High Court under Article 226 of the Constitution of India. It is in the nature of self imposed restriction only. If a particular case falls in the exceptions carved out and there are no disputed questions of facts arising for consideration, it is not necessary to relegate the parties to avail the alternative remedy and there is no bar for entertaining a writ petition and granting relief, if the party approaching this court is aggrieved by the arbitrary action of the other party. Having regard to the facts of the present case as discussed herein above, the principle relating to existence of alternative remedy would not be a bar for entertaining the present writ petition.

22. Accordingly, the writ petition is allowed and the impugned demand notice dated 23.01.2020 u/s 13(2) and possession notice dated 24.09.2020 u/s. 13(4) of the SARFAESI Act, 2002 are hereby set-aside. However, it is made clear that the respondent bank is free to initiate proceedings afresh, and take further steps in accordance with law, if the 5th petitioner account had become NPA after being intimated of the

³ 2020 (4) ALD 397

reduced sanction limit w.e.f. 22.04.2019 and expiry of the period specified as per the RBI circular, on any subsequent date.

23. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SD/- N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Authorized Officer, State Bank of India, D. No. 6-2-915, 5th Floor. HMWSSB Compound, Khairtabad SAM Branch. Hyderabad,
2. One CC to Sri Chandrasen Law Offices, Advocate [OPUC]
3. One CC to Sri A. Krishnam Raju, Advocate [OPUC]
4. Two CD Copies

CHR



HIGH COURT

DATED:19/03/2021



ORDER

W.P.No.18415 of 2020

ALLOWING THE WRIT PETITION
WITHOUT COSTS

⑤ VLW
24/3/21