HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.20639 of 2020

Date:17.10.2022

Between:

M/s Archana Granites, 2nd Floor A-12 Chandralok Complex Road No 2 Film Nagar Hyderabad-50033 A Partnership firm rep by its Partner Ganta Narahari and another.

.....Petitioners

And

Punjab National Bank,
E Oriental Bank of Commerce,
D No 11231414, Anantha Laxmi Complex,
Pochamma Maidan Warangal 506002.

.....Respondent

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.20639 of 2020

ORDER : (Per Hon'ble Sri Justice P.Naveen Rao)

Heard learned counsel Sri Murali Manohar for petitioners and learned counsel Sri Maganti Satyanarayana for respondent.

2. Petitioner No.1 is a Micro, Small & Medium Enterprise (MSME) unit. On 19.12.2017 petitioner No.1 has approached the E-Oriental Bank of Commerce, Warangal Branch, for obtaining credit facility. The respondent – E-Oriental Bank of Commerce, which was later merged into Punjab National Bank extended the cash credit facility of Rs.9,10,00,000/- and a bank guarantee of Rs.25,00,000/-, to enable the petitioners to proceed with trading of granite slabs/blocks in Warangal district. The said limit was later renewed from time to time and reduced to Rs.8,00,00,000/-. Holding that petitioners defaulted in repayment of loan, the respondent – Bank declared the loan account of petitioners as non-performing asset and has taken recourse to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short 'SARFAESI ACT, 2002') to recover the loan amount.

3. On 02.09.2020 the respondent – Bank issued notice under Section 13(2) of the SARFAESI ACT, 2002, calling upon the petitioners to repay the entire loan amount. At that stage, this writ petition was filed praying to grant the following relief:

> " to issue a Writ or order of direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent in declaring the account of the Petitioner as NPA without following the RBI guidelines in Circular No.DBOD.No.BP.BC.9/ 21.04.048/2014-15 dated July,1,2014, Circular No. DBR.No. Bp.BC.18/21.04.048/2018-19 dt.01-01-019, RBI Circular DOR.No.BP.BC.34/21.04.048/2019-20 11-02-2020, RBI CIRCULAR DOR No. BP.BC.71/21.04.048/2019-2027-03-020,RBI/2020-21/16 DOR NO.BP.BC/3/20.04.048/2020-21 dt.06-08-2020 and RBI Circular DOR NO.BP.BC.71/21.04.048/2019-20 dt.23-05-2020, CGTMC Circular No.170/2020-21 dated 24-06-2020 and guidelines issued in Aatmanirbhar Bharat scheme dt 13/05/202 0 as arbitrary illegal capricious and violative of principles of natural Justice and against the intention of the SARFAESI Act and rights guaranteed under Article 14 and 300A of the Constitution of India and consequently set aside the Demand Notice dated 02/09/2020 under Section 13 2 of the SARFAESI Act declaring the Petitioners accounts NPA on 30-10-2019 and pass such other order or orders as this Hon'ble Court may deems fit in the circumstances of the case and in the interest of justice.
>
> It is also just and essential that the Hon'ble Court may be pleased to grant stay of all further proceedings initiated by the Respondent under SARFAESI Act pursuant to the Demand Notice dated 02-09-2020 issued under Section 13 (2) of SARFAESI Act, pending disposal of the above Writ Petition and pass such other order or orders as this Hon'ble Court may deems fit in the circumstances of the case and in the interest of justice."

4. From the averments in the affidavit filed in support of the writ petition and the prayer extracted above, it is apparent that petitioners are aggrieved by classification of their loan account as non-performing asset and contend that the said classification was made in violation of the guidelines issued by the Reserve Bank of India from time to time, as well as the guidelines issued under Aatmanirbhar Bharat Scheme dated 13.05.2020 and apprised that the same amounts to arbitrary exercise of powers by authority.

5. Aggrieved by any decision taken by the respondent –Bank from the stage of Section 13(4) of the SARFAESI ACT, 2002, Section 17 of the SARFAESI ACT, 2002, provides remedy before the Debts Recovery Tribunal.

6. In the instant case, petitioners filed this writ petition even before the Section 13(4) stage, challenging the declaration of their loan account as non-performing asset.

7. It is consistently held by the Hon'ble Supreme Court that a person cannot avail a legal remedy unless it reaches the stage of Section 13(4) and once, Section 13(4) stage is reached, the person can avail the remedy as available in law.

8. This very issue was considered by this Court in W.P.No.35063 of 2022 where both of us are members of the Division Bench. This Court in the judgment rendered on 12.10.2022 in W.P.No.35063 of 2022 held as follows:

> "12. From the discussion on relevant statutory provisions and opinion expressed by Hon'ble Supreme Court in **Mardia Chemicals** and **Transcore,** it is clear as crystal that once a loan account becomes substandard, doubtful or loss asset, in the book of a bank/financial institution it is classified as NPA. The RBI Guidelines clearly specify when a loan account reaches that stage to be classified as NPA. The steps taken leading to classifying a loan account as NPA is an internal matter within the bank/financial institution. The Bank/financial institution notifies the same in Section 13 (2) of the Act, 2002 notice and calls upon the borrower to clear the loan within sixty days. At that stage, it is open to borrower to respond and place before the bank/ financial institution his point of view. He can also oppose declaring his account as NPA. He can rely on RBI Guidelines on various aspects. The Bank/Financial institution is required to consider the objections objectively and to take a decision. It is also required to communicate the decision to the borrower.
>
> 13. As analyzed by Hon'ble Supreme Court in **Mardia Chemicals** and **Transcore** there is a statutorily prescribed restraint in taking legal course by a borrower before Section 13(4) of the Act, 2002 stage. Statute prescribed this course having regard to accumulation of debts to banks stifling the banking/financial sector. It is in public interest to fast track the recovery of dues by banks/financial institutions. Thus, in **Mardia Chemicals** Hon'ble Supreme Court held that scheme of SARFAESI Act, 2002 does not envisage any remedy till Section 13(4) stage is reached. It has gone to the extent of saying that borrower has no right of hearing at the stage of Section 13(2) and he can only file objections under Section 13(3-A) of the Act, 2002. Therefore, upto Section 13(4) no remedy is provided to a borrower/guarantor. It is the statutory scheme that must be respected by all, more so when the scheme stood the test of judicial scrutiny.
>
> 14. After Section 13(4) notice, it is open to borrower to approach Debts Recovery Tribunal under Section 17 of the Act, 2002. The Debts Recovery Tribunal is competent to go into all aspects leading to bank/ financial institution taking recourse under Section 13(4) of the Act, 2002. Perforce, when the Debts Recovery Tribunal examines the claim of borrower/guarantor/person aggrieved opposing measures taken

under Section 13(4) of the Act, 2002 such as taking symbolic possession, notice of sale of secured asset, taking physical possession etc, the borrower/guarantor/person aggrieved can plead before the Debts Recovery Tribunal his defence against such action including alleged violation of RBI Guidelines leading to illegally classifying his account as NPA.

15. Further, classifying loan account as NPA can be challenged before RBI alleging that its guidelines are violated. A complaint can be filed before the Ombudsman. Therefore, taking recourse to writ remedy before reaching Section 13(4) of the Act, 2002 stage defeats the statutory scheme and scuttles the very object in creating special dispensation to recover the debts by banks/financial institutions. The object and purpose of these two Acts have to be kept in mind while considering a writ petition filed against classifying an account as NPA. It is not for no reason the legal remedy is differed till Section 13 (4) of the Act, 2002 stage is reached. Till this stage, as consistently held by Hon'ble Supreme Court, no cause of action arises to the borrower/ guarantor to seek legal remedy. He has to wait till further steps are taken under Section 13(4) of the Act, 2002.

16. Time and again, the Constitutional Courts are repelling the resort to writ remedy against classifying a loan account as NPA and various measures taken by Banks/Financial Institutions under SARFAESI Act and relegating parties to avail remedy under Section 17 of the Act, 2002.

18. The remedy under Article 226 of the Constitution of India is extraordinary and knows no bounds. Wherever injustice is caused to a person writ Court extends its long arm of justice and reaches out to a person in need. Though, Article 226 is very wide, the constitutional Courts have imposed self-imposed restraint on exercising its extraordinary jurisdiction. Statutes and Administrative orders dealing with a particular aspect do provide mechanism to redress grievances arising out of a statute or administrative order. Some times, more than one remedy is provided, like Original Authority, Appellate Authority and Revisional Authority. They also create statutory Tribunals with layers of redressal mechanism. Such forums are effective and efficacious to dress the grievance of a person. Whenever the Court notices that the grievance ventilated before the Court can be addressed by a duly constituted administrative authority/quasi-judicial body, it relegates the person to avail the said remedy before knocking its doors. In the following decisions, Hon'ble Supreme Court succinctly stated the need to avail statutorily engrafted remedy before availing the remedy under Article 226 of the Constitution of India.

18.2. In **Phoenix ARC (P) Ltd,** the Hon'ble Supreme Court held as under:

"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. ***During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable.*** Therefore, decisions of this Court in *Praga Tools Corpn.* [*Praga Tools Corpn.* v. *C.A. Imanual*, (1969) 1 SCC 585] and *Ramesh Ahluwalia* [*Ramesh Ahluwalia* v. *State of Punjab*, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers**............**

21. Applying the law laid down by this Court in *Mathew K.C.* [*State Bank of Travancore* v. *Mathew K.C.*, (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, ***we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court***. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the SARFAESI Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the SARFAESI Act. Filing of the writ petition by the borrowers before the High Court is nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor

> have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."
>
> (emphasis supplied)
>
> 19. As held by Hon'ble Supreme Court in **L.Chandra Kumar Vs Union of India**[1], the Debts Recovery Tribunal is a duly constituted Tribunal vesting jurisdiction on matters arising out of SARFAESI Act, 2002 and is the Court of first instance. When a person has a statutorily engrafted remedy available to redress his grievance, the writ Court does not entertain the writ petition and relegates him to avail the said remedy. This case is no exception and must fall in line.

9. Learned counsel for the respondent – Bank fairly submits that the bank has not proceeded to take further action in view of the interim order passed by this Court on 20.11.2020.

10. Following the decision in W.P.No.35063 of 2022, this Writ Petition is disposed of, granting liberty to the petitioners to avail appropriate remedy as available in law, as and when Section 13(4) of SARFAESI ACT, 2002, stage is reached. There is no expression of opinion on merits. All issues are left open to be urged in appropriate proceedings.

[1] (1997) 3 SCC 261

Miscellaneous petitions, pending if any, shall stand closed.

P.NAVEEN RAO,J

J.SREENIVAS RAO,J

Date: 17.10.2022
PT

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

AND

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION NO.20639 OF 2020

Date: 17.10.2022

PT