

*** THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
+ WRIT PETITION No.14396 and 15220 of 2023**

% 22nd SEPTEMBER, 2023

W.P.No.14396 of 2023

State Bank of India

... Petitioner..

AND

\$ The Debt Recovery Tribunal,
Visakhapatnam and 4 others.

... Respondents.

! Counsel for the Petitioners: Mr.S.Satyanarayana Moorthy
Mr. T. Anup Kumar

^ Counsel for the respondents: Mr.N.Siva Reddy

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1975 AP 187
- 2) (1996) 3 ALD 477
- 3) (2012) 5 SCC 370
- 4) (2004) 4 SCC 311

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
and
HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
WRIT PETITION Nos.14396 AND 15220 of 2023

COMMON ORDER: *(per D.V.S.S.Somayajulu, J)*

Writ Petition No.14396 of 2023 is filed questioning the inaction for passing orders in S.A.No.149 of 2023, particularly the vacate stay petition, which has not been heard and the delay that is occurring in the disposal of the case. The further question raised is about the direction for payment of 10 monthly installments contrary to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (for short "SARFAESI Act")

2) The connected Writ Petition No.15220 of 2023 is filed by the auction purchaser questioning the inaction of the respondent bank in not receiving the balance sale consideration.

3) With the consent of all the learned counsel the matter was taken up for hearing. The facts are not seriously in dispute. The writ petitioner in W.P.No.14396 of 2023 was

issued a notice under the provisions of SARFAESI Act and they brought to sale a particular property. The amount outstanding as on 31.10.2021 is Rs.4,53,38,599/- along with interest from 01.11.2021 and other charges etc. The auction notice was issued on 20.02.2023. The 5th respondent in this writ petition, who is the writ petitioner in W.P.No.15220 of 2023 is the successful bidder. The auction was completed on 24.03.2023. The highest bid is for Rs.8,65,00,000/- against the reserve price of Rs.7.35 crores.

4) The two essential grievances urged by the learned counsel for the petitioner in W.P.No.14396 of 2023 is that virtually an installment decree has been granted by the DRT in this matter. As per the said order dated 17.03.2023, which is now impugned, stay was granted in I.A.No.480 of 2023 in S.A.No.149 of 2023 on the condition that the petitioner therein (who is the 1st respondent herein), shall deposit Rs.40 lakhs on or before 24.03.2023, further Rs.40 Lakhs on or before 30.04.2023 and the balance outstanding in equal monthly installments. It is thus pointed out that 10 months time has been granted for payment of the amount. Learned counsel submits that as per Section 17 (5) of the SARFAESI

Act the entire case should be disposed of within 60 days from the date of application. Even if time was to be extended on just and proper cause as recorded in writing the overall limit is four months as per this section. Therefore, learned counsel submits that the Court committed an error in granting such a long period and also installments. In addition, he submits that it is clearly pleaded in counter affidavit filed that a successful bid was filed by the 5th respondent herein. Learned counsel points out that as per the provisions of the SARFAESI Act and the rules, the balance amounts have to be deposited by the bidder within the stipulated period of 90 days by the bidder, failing which he would suffer serious loss. It is pointed out that despite the counter being filed and the reply filed to the same, the matter is not being taken up and are disposed, therefore the writ is filed.

5) Learned counsel for the petitioner also relies upon a judgment of a learned single Judge of the Kerala High Court in WP No.3189 of 2022. In particular he points out to para 12 about the manner and method in which such interim order should be passed.

6) In reply to this learned counsel for the respondents argued that there is nothing wrong with the said order and that they are already complying with the same, and almost the entire loan has been discharged. Therefore he submits that no fault can be led at the door steps of the DRT and that an endeavor was to seek recovery of the money and that is being accomplished in legal manner. Therefore, Sri N.Siva Reddy opposes the prayer.

7) Learned counsel for the auction purchaser, who is also the writ petitioner in W.P.No.15220 of 2023, Sri T. Anup Kumar, learned counsel argues that his rights as a bidder are being seriously impaired since he has become the successful bidder in the auction and the rules permit only 90 day period for the payment of the money.

COURT:

8) This Court has heard all the learned counsel at length and notices that the similar orders are being passed both by civil courts and by tribunals.

9) An injunction is an order that should not be granted for mere asking. For the sake of good order the following judgments are relied upon:

(i) ***Nawab Mir Barkat Ali Khan v Nawab Zulfiqar Jah Bahudur***¹

“14. It is well-settled that the grant or refusal of a temporary injunction is covered by three well established principles viz., (1) whether the petitioners have made out a prima facie case (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if the temporary injunction is granted and (3) whether the petitioners would suffer irreparable injury. With the first condition as sine qua non, at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle the petitioners to obtain a temporary injunction in their favour.”

(ii) ***Sheela Harry v Capt. Mohd. Mirza***²

“43. In the case of *T.A. George v. D.D.A.* (3) AIR 1995 Delhi 131, the Delhi High Court observed that injunctions were a form of equitable relief and had to be adjusted in aid of equity and justice to the facts of each particular case. No Court had ventured to lay down absolute propositions and thereby forged fetters. However, some principles were too well entrenched and they were (1) Whether the petitioner had made out a *prima facie* case; (2) whether the balance of convenience was in his favour *i.e.* whether it would cause greater inconvenience to him if the

¹ AIR 1975 AP 187

² (1996) 3 ALD 477

injunction was not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to, if the temporary injunction was granted; and (3) whether the petitioner would suffer irreparable injury. It was further observed that the mere circumstance that the party had a prima facie case did not necessarily mean that the order of temporary injunction must follow. The Court had also to consider the question of irreparable or serious injury and the balance of convenience. With the first condition as sine qua non, the party must satisfy at least two conditions conjunctively. A mere proof of one of the three conditions would not take the party out of woods.”

(Emphasis supplied)

(iii) *Maria Margarid Sequiera Fernandes and others v Erasmo Jack De Sequiera (dead) through LRs.,*³

“83. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and Judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. (emphasis supplied)

84. In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In

³ (2012) 5 SCC 370

case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction.”

10) To the same effect is the judgment of the learned single Judge in W.P.No.31891 of 2022 which was passed after considering the leading judgment in ***Mardia Chemicals Ltd., v Union of India***⁴ the following was held in para 12 of this judgment:

“...Moreover the judgment in *Mardia Chemicals* (supra) declares in no uncertain terms that the Tribunal has the power to grant conditional interim orders. Whether any amount is to be deposited or the extent of amount to be deposited will depend on the prima facie appreciation by the Tribunal on the merits of the contentions taken by both sides and on the application of the well settled principles governing the grant of interim relief namely (i) strong prima facie case; (ii) balance of convenience; and (iii) irreparable injury. While it may not be necessary to the Tribunal to write a detailed order touching upon merits of each and every contention taken before the Tribunal as well as the response by the banks/financial institutions to such contentions, the order of the Tribunal must, on a reading, indicate

⁴ (2004) 4 SCC 311

that it was alive to the contentions raised in the Securitization Application.”

11) As pointed out by the Hon'ble Supreme Court of India, the fate of the case is often decided by the grant of an order. Therefore, due care and caution must be taken before such an order is passed. A reading of the impugned order does not indicate that the issues of *prima facie* case, balance of convenience and irreparable injury were in fact considered. This Court agrees with the learned single Judge of the Kerala High Court that in every case a detailed order need not be written in interim orders, but at the same time the order should indicate that these essential elements were taken into account before a conclusion is reached.

12) The need for reasons in an order cannot be over emphasized. Time and again the highest courts of the land have held that the reasons, even if they are brief, should be given in an order.

13) It is also borne from the record that the 5th respondent has become successful bidder and therefore his interest has also to be safeguarded in the circumstances and cannot be overlooked. The purpose in enacting the RDDB Act

and the SARFAESI Act has been considered in more than one judgment of the Hon'ble Supreme Court of India and other courts of the land. Both these Acts are meant for speedy and effective disposal of cases relating to banks and financial institutions and to facilitate the recovery of debts without intervening of the courts. New simplified procedures have been laid down permitting the sale of the property in which security interest has been created. This overall purpose, for which Act was enacted, should always be kept in mind. In the case on hand 10 months time has been given for the deposit of the amount, while this is virtually an "installment decree". Installment decrees are not to be granted for the asking. These are the decrees which can be passed under certain circumstances only as for example set out in Order 20 Rule 11 C.P.C. The power of the Court to impose conditions for granting a stay order etc., are also clear but the same is an exception rather than the rule. The power to grant installment decree where a mortgage is created is also very doubtful. In most cases before DRT a security interest is created for the loan. This aspect is to be kept in mind also.

14) It is also to be noted that keeping in view the overall scheme of the Act and the purpose for which these Acts are enacted there should not be a great delay in disposing the matters. In the case on hand there is an innocent third party (the auction purchaser), who has participated in the Bid. His interest should also be safeguarded to. In the counter affidavit filed this is brought to the notice of the Court. This Court is of the opinion that there is enough power vested in the Tribunal to take up the matter and decide the same on the merits. Delay defeats the justice. This is more so when matters are heard by Tribunals under specific enactment. This need not be reiterated again and again.

15) Without going anything further on the merits of the matter, this Court is of the opinion that the Writ Petition should be allowed. Accordingly, W.P.No.14396 of 2023 is allowed. A direction is given to the DRT, Visakhapatnam, to hear and dispose of the I.A.No.480 of 2023 in S.A.No.149 of 2023 within three weeks from the date of receipt of a copy of this order. The matter should be heard on merits and a detailed speaking order should be passed, without being

influenced by the fact that the High Court has directed the case to be heard and disposed of. Depending on the order passed by the DRT Visakhapatnam, further steps should be taken with regard to the auction purchaser, the receipt of the balance sale consideration, registration of the sale certificate etc. Since the W.P.No.14396 of 2023 is allowed W.P.No.15220 of 2023 is disposed of. The DRT should follow all the directions of the Courts and the procedures stipulated meticulously and scrupulously.

16) Consequently, the Miscellaneous Applications pending in these writ petitions, if any, shall stand closed

D.V.S.S.SOMAYAJULU, J

DUPPALA VENKATA RAMANA, J

Date: 22.09.2023.

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