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PRATIBHA RAMESH PATEL

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No.35 of 2016)

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MARCH 09, 2016

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

C

Constitution of India – Arts. 32, 226 – Filing of writ petition u/Art. 32, during pendency of writ petition u/Art. 226 before the High Court for the same relief – Maintainability of petition u/Art. 32 – Writ petition filed u/Art. 32 by the petitioner challenging the constitutionality of ss. 2, 12 and 15(a) of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 – Petitioner had filed writ petition u/Art. 226 before the High Court for the same relief – High Court admitted the writ petition and granted an interim order which worked itself out and the petition is still pending before the High Court – Held: Petition u/Art. 32 before this Court is not maintainable – It is an abuse of process of the Court, if not misuse – Having invoked a constitutional remedy before the High Court u/Art. 226, the petitioner cannot, under law, file another petition u/Art. 32 on identical set of facts for identical relief – Rs. 1 lakh cost imposed on the petitioner – Abuse of process of law – Remedy – Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 – ss. 2, 12 and 15(a).

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 35 of 2016.

A. C. Philip, Rabin Majumder, Anjan Sinha, Advs. for the Petitioner.

Rajeev K. Pandaya, Rajeev Maheshwaranand Roy, Advs. for the Respondents.

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The Judgment of the Court was delivered by

KURIAN, J. 1. We have heard learned counsel for the parties.

2. This writ petition under Article 32 of the Constitution of India is filed mainly with the following prayers :-

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(a) To declare that sections 2, 12 and 15(a) of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act,

2012, which has since been notified on 3rd of January, 2013 and the said Act to have brought into force as well on 15th January, 2013, as unconstitutional and void since the said Act by amendment to the Securitisation and reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, has brought Multi State Co-operative Society within the ambit of SARFAESI ACT, 2002 and the RDDBFI Act, 1993 and that to further declare that the (Amended) Act, 2012 as unconstitutional and void for it is beyond the legislative domain of the parliament to enact law concerning the “co-operative societies” except as provided for under Articles 249, 250, 252 or 253 of the constitution, and in doing so in contravention of Article 245 and 246 read with Schedule VII of the Constitution of India, has trespassed into the exclusive legislative domain of the State legislature, nay, had inflicted fatal injury to the federal structure of the constitution, which constitute to be the very basic feature of our constitution;

(b) To declare that, between Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (as amended) and the Multi-State Co-operative Societies Act, 2002, provisions of the latter Act will prevail for recovery of purported amount due to/from a Co-operative Society or a Member or Borrower thereof and vice versa, and that the former Act stands ousted;

(c) To declare that Sections 2, 12 and 15(a) of The Enforcement of Security Interest and Recovery of Debts Laws (amendment) Act, 2012, inserting sub-section 2(c)(iva) in the Securitisation and reconstruction of Financial Assets and Enforcement of securities Interest Act, 2002, and sub-sections 2(d)(vi) and 19(1A) in Recovery of Debts Due to Banks and Financial Institutions Act, 1993, passed by the Parliament, is unconstitutional inasmuch as by the said amendment a Co-operative Society, is sought to be brought within the purview of the SARFAESI Act, 2002;

(d) issue a writ in the nature of certiorari or certiorarified prohibition or any other appropriate writ or order or direction, quashing and setting aside the notice dated 7.10.2013 issued by Respondent Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act,

- A 2002 and the order of the Ld. District Magistrate, Thane, dated 10.04.2015 in Case No. 88/2014, Ld. Tahsildar, Thane Notice No. revenue/Room-1/T-1/Criminal/Vashi/7268/2015/dated 30.04.2015 and the two Possession Notices dated 10.12.2015 vide Ref. No. Criminal/201/2015 and Ref. No. Criminal/202/2015 issued by Divisional Official, Belapur, (Annexure "P2" and Annexure "P3")
- B as without jurisdiction, in violation of the principles of natural justice, section 91 and 91A of the Maharashtra Co-operative Societies Act, 1960 (XXIV of 1961) and section 84 of the Multi State Co-operative Societies Act, 2002 and hence null and void ab initio and by an order of injunction or prohibition restrain the Respondent Bank, its officers, men, agents and privies from in any manner interfering with the peaceful possession and enjoyment of the petitioner's properties, which the Respondent Bank claims to be a secured asset at its hands and, in particular, from dispossessing the petitioner of her residential home under the purported powers under Section 13 of the SARFAESI Act, 2002;
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- D (e) To declare that the notice dated 7.10.2013 purportedly under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and impugned order of the Ld. District Magistrate, raigad, Alibag dated 30/06/2014 (Annexure "P1" purportedly under section 14 of the SARFAESI Act, 2002 in Case No. 18/2014 as null and void, being in violation of the principles of natural justice;
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- F (f) To issue an appropriate writ, order or direction, declaring that the respondent banks which are guilty of breach of contract, civil breach of trust, culpable negligence, and malicious and tortuous action and therefore no right or title has inured in them to invoke sections 5, 6 and 7 much less section 13(2) of the SARFAESI Act, 2002, and that in any scenario the respondent banks are duty bound to afford an opportunity of being heard to the petitioner/her Company before an assignment of the 'security interest' as defined in section 2(zf) of the SARFAESI Act, 2002, which it falsely claim to be existing in its favour to any securitization companies and further that such an obligation, to observe the principles of natural justice, is liable to be read into sections 5, 6 and 7 of the SARFAESI Act, 2002 and in particularly section 6 thereof.
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(g) issue a writ of prohibition or any other appropriate writ or order restraining and prohibiting the respondents its agents, servants and privies from classifying the account of the petitioner or her Company as willful defaulter and proceeding in any manner or take recourse to any judicial proceedings either by way of institution of a petition as against the petitioner company or by taking recourse to the statutory powers vested in them under section 13 of the SARFAESI Act, for to permit the respondent Bank to do so would amount to multiplicity of proceedings, and further to restrain and prohibit the Respondent Bank from taking recourse to any precipitatory steps including assignment of the petitioner's property to any Asset Reconstruction Company;

(h) issue a writ of prohibition or any other appropriate writ or order restraining and prohibiting the respondents, its agents, servants and privies from in any manner interfering with the peaceful possession and enjoyment of the properties of the petitioner/petitioner's company or the purported borrowers and purported guarantors which the Respondent Bank falsely claim to be secured assets at its hands and in particular proceeding any further pursuant to the notice dated 7.10.2013 purportedly under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002, and impugned order of the Ld. District Magistrate, dated 30/06/2014 purportedly under Section 14 of the SARFAESI Act, 2002 in Case No. 18/2014.

(i) issue a writ in the nature of mandamus or any other appropriate writ, order or direction, to the Respondent Bank/Authorised Officer to state on affidavit the source of his authority to invoke Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and to produce a copy of the Resolution, if any, passed by the Board of Directors of the Respondent Bank by which he was appointed as an authorized officer to exercise the function under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest.

(j) pass any other order or orders which this Hon'ble Court may deem fit and proper under the facts and circumstances of the

A case as also in the interest of justice as the nature and circumstances of the case may require.”

3. The petitioner has filed another writ petition under Article 226 of the Constitution of India before the High Court of Bombay, literally with the same prayers. In the said writ petition, on 30th October, 2015, the High Court passed the following interim order :-

“Not on Board. Mentioned.

2. Having heard Mr. Nedumpara, learned counsel appearing for the petitioner and since our attention is invited to the communication at pages 59 and 60 of the paper book, we pass the following order:-

i. Issue notice to Respondent Nos. 1 and 2 returnable on 4th December, 2015.

ii. On the condition that the petitioner deposits a sum equivalent of 50% of the amount claimed by respondent Nos. 1 and 2 with Respondent No.1 Bank on or before 3rd December, 2015 and without prejudice to its rights and contentions, there would be ad-interim order restraining Respondent Nos. 1 and 2 and respondent Nos. 5, 6, 7 and 8 from enforcing and executing the order passed under Section 14 of the SARFAESI Act in Case No. 18 of 2014.

iii. If the amount as mentioned above, is not deposited on or before 3rd December, 2015, the ad-interim order to stand vacated without any further reference to the Court.

3. Needless to clarify that this order and direction is without prejudice to the rights and contentions of all parties.”

4. Admittedly, the said order was not complied with and therefore, interim order stood vacated. But the writ petition having been admitted by the Court is still pending before the High Court.

5. In the writ petition filed under Article 32 of the Constitution of India, before this Court, the petitioner has, no doubt, disclosed filing of the writ petition before the High court at paragraph 39. To the extent relevant, the statement reads as follows :-

“The petitioner instituted the petition under Article 226 of the Constitution of India, seeking a declaration that the measures under Sections 13 and 14 of the SARFAESI Act, 2002 are void ab initio.

The Hon'ble High Court, Bombay was pleased to admit the said Writ Petition. Though the Hon'ble High Court, Bombay, was pleased to admit the said Writ Petition it was not inclined to stay the proceedings under Sections 13 and 14 of the SARFAESI Act, 2002 unconditionally. The Hon'ble High Court was pleased to grant an injunction, however, the condition subject to which the interim injunction was granted was erroneous that the petitioner was unable to comply with the same. Considering the larger issue, the petitioner, has instituted the instant Writ Petition under Article 32 of the Constitution of India before this Hon'ble Court....”

6. In I.A. No.2 of 2016, the Respondent No.2 has produced copy of the Writ Petition No. 3145 of 2015 filed by the writ petitioner before the High Court of Bombay.

7. We have gone through the pleadings in both the writ petitions.

8. Virtually, the writ petition filed before this Court is a true copy of the writ petition filed by the petitioner under Article 226 of the Constitution of India before the High Court except for the disclosure of the pendency of the writ petition and some other minor changes.

9. What is revealed from what we have narrated above is certainly shocking. The petitioner having filed a writ petition before the High Court under Article 226 of the Constitution of India, the writ petition having been admitted by the Court, the High Court having granted an inter im order which has worked itself out and the petition is still pending before the High Court, filing a writ petition under Article 32 of the Constitution of India before this Court is nothing but an abuse of process of the Court, if not misuse.

10. Having invoked a constitutional remedy before the High Court under Article 226 of the Constitution of India, the petitioner cannot, under Law, file another petition under Article 32 of the Constitution of India on identical set of facts for identical reliefs.

11. In the above circumstances, this writ petition is dismissed with costs of Rs.1,00,000/- (rupee one lakh only) to be deposited with the Supreme Court Legal Services committee within four weeks.

Nidhi Jain

Writ Petition dismissed.