Writ Petition No.3457/2016

15.7.2016.

Shri Manoj Mishra, learned counsel for petitioner.

None for the respondents.

Heard.

1. Issue raised in this petition as to whether it is within the propriety of the Bank to publish a photograph of defaulter in newspaper in the event of failure on the part of such borrower(s) is no more *res integra* so far as this High Court is concerned. A co-ordinate Bench of this Court in **Ku. Archana Chauhan vs. State Bank of India AIR 2007 MP 45** has held –

> "2. With respect to the photographs, in the opinion of this Court publication of photographs of the borrowers cannot be said to be impermissible mode. Action cannot be said to be arbitrary or illegal in any manner. It cannot be said to be defamatory publication made, hence, I find no ground to quash the publication (P-3)."

2. Though the judgment in **Ku. Archana Chauhan** (supra) is reportedly distinguished by the Calcutta High Court in **Ujjal Kumar Das vs. State Bank of India : Writ Petition 10315(W) of 2013**, wherein learned Judge observed –

> "20. In my humble view, the opinions recorded in the paragraph extracted supra are neither backed by any reason nor can be supported with reference

to any provision of the SARFAESI Act or the rules framed thereunder. It is settled law that broadly, every judgment of a superior courts has three segments, viz. (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The principle on the basis whereof a legal issue is answered forms the ratio decidendi of a judgment. It is the ratio decidendi of a judgment and not the conclusion that operates as a precedent. The principle, on the basis of which His Lordship reached the opinions as recorded, is conspicuous by its absence. Opinions, without anything more, cannot be of much persuasive value and hence I am left with no other option but to decline to be ad idem with the same.

……

24. Law is well settled that the State or its executive officers cannot interfere with the rights of its subjects unless they could point to some specific rule of law authorizing the act of interference. It is also well settled principle of law that when a stature requires a thing to be done in a particular manner, it should be done in that manner alone or not at all. I proceed to hold on the said principle that a secured creditor is not free to take any action it wishes for enforcing its security interest; it is empowered and authorized to take such action that the statute permits it. There is absolute lack of legislative sanction in relation to publication of photographs of defaulting borrower(s)/guarantor (s). The SARFAESI Act and the rules framed thereunder not having conferred any power on the secured creditors to publish their photographs, they

> cannot resort to such action on the ground that publication of photograph is not prohibited. For the secured creditors, the test is not as to whether publication is prohibited by the statute but whether such publication is permitted by it. Prohibition has to be inferred in the absence of express authorization. If the arguments advanced by the respective learned counsel for the secured creditors were accepted, the secured creditors would have the carte blanche to invent any method for recovery of their secured debt throwing asunder the provisions of the SARFAESI Act."

3. However, of late, a Division Bench of High Court of Judicature at Bombay had an occasion to consider the issue in **D.J. Exim (India) Pvt. Ltd. vs State Bank of India : Writ Petition (L) No.2808/2013** decided on 28.11.2013. The Division Bench after taking into consideration the decision in **Ujjal Kumar Das** (supra) and W.P. No.10864/2013 and W.P. No.20686/2013 decided by Kerala High Court of deprecating the practice of publishing the photograph of defaulter in newspaper and the decision in **Ku. Archana Chauhan** (supra) and **K.J. Doraisamy vs Assistant General Manager, State Bank of India : 2006(4) MLJ 1877 : (2007) 136 Comp. Case 568 Madras** wherein action of publishing photograph of defaulter in the newspaper have been upheld and taking into

consideration Rule 8 of the Security Interest Enforcement Rules, 2002, which mandates -

> *8. Sale of immovable secured assets.-*
>
> *(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix-IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.*
>
> *(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.*
>
> *(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.*
>
> *(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.*
>
> *(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the*

reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

PROVIDED that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers; one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,--

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

- proceeded to hold :

"11. A perusal of the said Rule clearly indicates that the Bank has the right to publish the name of the defaulters by giving their names and addresses and two fold purpose is served as a result of the said publication of the names, firstly the fact that these persons are wilful defaulters is made known to the public at large and secondly it also tends to caution the prospective buyers who may be offered the property which is mortgaged by these defaulters with the bank. This being the primary objective for the publication of the notice, in our view, there would be no impediment in publication of photograph of wilful defaulters and particularly

those defaulters who has committed various acts of misfeasance."

4. As regard to decision by the Calcutta High Court in **Ujjal Kumar Das** (supra) and Kerela High Court, the Division Bench in **D.J. Exim (India) Pvt. Ltd.** (supra) observed –

"14. So far as two judgments on which reliance has been placed on behalf of the petitioners are concerned, the said decisions are challenged by the bank and the intra-count appeal is pending before the Division Bench. Even otherwise after going through the said judgment with respect we do not agree with the view expressed by the two learned Single Judges of the two High Court. Further the Apex Court in the case of V. T. Khandoze vs. Reserve Bank of lndia has observed in paragraph as under:

"Section 58(1) of the Act confers power on the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act. It seems to us clear that it is not only convenient but manifestly necessary to provide for the service conditions of the the Bank's staff in order to give effect to the provisions of the Act. The Act was passed in order to constitute a Bank for achieving economic purposes of the highest national importance : regulating the issue of Bank notes, keeping reserves with a view to securing monetary stability in India and generally to operate the

currency and credit system of the country its advantage. It is, in our view, not open to any question either on the basis of reason or authority that the power to provide for service conditions of the staff is at least incidental to the obligation to carry out the purposes for which the Bank was constituted. As observed in Armour v. Liverpool Corporation 1939 Ch. 422, 434,435.

To assist in removing from the minds of its employees the fear of an unprotected old age, to foster their happiness and contentment, and to procure their good and efficient service, are objects which, even if economic considerations alone count, are incidental, if not vital, to the proper carrying on of any undertaking as well by a municipal as by any other corporation.

The doctrine of ultra vires in relation to the powers of a statutory corporation has to be understood reasonably and so understood, "whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (untess expressly prohibited) to be held by judicial construction, to be ultra vires." (See Attorney- General v. Great Eastern Rly. Co.) (1880) 5 ACT 473 (HL). The Central Board has, therefore, the power to make service regulations under Section 58(1) of the Act."

The Apex Court has therefore clearly held that whatever has to be done fairly and is also regarded as incidental to or consequential upon those things which the legislature has authorised to do ought

> not to be held by judicial construction to be ultravires. In the present case Rule 8 specifically authorised the bank to publish the names ahd addresses of the wilful defaulters. There is no legal bar either in the said rule or under any provisions of the Act which expressly prohibits the bank from publication of photographs and therefore the action of the bank in publishing the photographs cannot be held to be ultravires. Ratio of the judgment in our view squarely applies to the facts of the present case. In the result, it is not possible to accept submissions of learned counsel appearing on behalf of the bank, the petition therefore is dismissed."

5. This Court is in respectful agreement with the view taken by the Division Bench of Bombay High Court in **D.J. Exim (India) Pvt. Ltd.** (supra) that it is within the discretion of the Bank to publish the photograph of defaulter in the newspaper. However, there being a difference between defaulter and wilful defaulter, this Court has no manner of doubt that the respondent-Bank exercises the discretion judiciously and objectively by taking into consideration the respective individual borrower(s).

6. In the case at hand, the facts reveal that the petitioner having wilfully defaulted in repaying the loan, has led the Bank file a recovery suit before the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act,

1993 forming subject of O.A. No.321/2015 for recovery of Rs.27,61,315/-. Since it is within the powers of the Bank to take action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the impugned intimation cannot be faulted with.

7. Consequently, petition fails and is **dismissed**. No costs.

(SANJAY YADAV)
JUDGE

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