(2012) 11 AP CK 0105

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23900 of 2010

K. Jayalalitha APPELLANT

Vs

Canara Bank, Sultan Bazar Branch RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Foreign Exchange Management Act, 1999 — Section 35
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A)

Citation : (2013) 3 ALD 40 : (2013) 5 ALT 64

Hon'ble Judges : Pinaki Chandra Ghose, Acting C.J.;Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : C. Raghu, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, A.C.J.

1. This writ petition is filed to declare the proceedings dated 9.9.2010 in Ref. No. HYDSB: CHANDANA: 1353: 2010, issued by the respondent bank u/s 13(3-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, ''the SARFAESI Act''), as illegal and arbitrary, and to set aside the same. Brief facts of the case are that the petitioner was carrying on business of BSNL franchise, for developing subscriber base for BSNL. In connection thereto, she availed loan from the respondent-bank. When her account became irregular, notice u/s 3.7.2010 was issued by the respondent bank u/s 13(2) of the Act directing her to pay an amount of Rs. 1,66,30,267.41 ps. together with further interest and incidental expenses and costs within sixty days from the receipt of the said notice. The petitioner sent a reply dated 3.9.2010 to the said bank. Not satisfied with the said reply, the impugned proceedings were issued by the respondent bank.

2. Heard the learned Counsel for the parties and perused the record.

3. According to the respondent bank, an amount of Rs. 1,66,30,267.41 ps. was due by the petitioner to the respondent-bank. Hence, the impugned proceedings were issued by the bank u/s 13(3-A) of the Act. Considering the amount involved in the matter and as the petitioner has an alternative remedy against the impugned proceedings, we are of the opinion that no order can be passed in favour of the petitioner in this writ petition. In United Bank of India Vs. Satyawati Tondon and Others, the Supreme Court held that the High Courts should not interfere in the cases where alternative remedy is available. In the said judgment the Supreme Court has specifically held in Paragraphs 53 and 55, as under: 53. In Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, , the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed:

31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case, the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant''s Counsel to demonstrate why the appellate jurisdiction of the High Court u/s 35 of FEMA does not provide an efficacious remedy. In fact, there could hardly be any reason since the High Court itself is the appellate forum.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

In these circumstances, we dismiss the writ petition giving liberty to the petitioner to approach the appropriate forum. Rule is discharged. No costs.

