

(2013) 08 KAR CK 0097

In the Karnataka High Court

Case No : Writ Appeal No. 2880 of 2010 (GM-KSFC)

Karnataka State Financial Corporation

APPELLANT

Vs

Sri H.I. Shamshuddin, Sri Basavegowda, Sri H.S. Mohammad
Jafrulla and Sri Jayaraju

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Karnataka State Financial Corporation Act — Section 29

Citation : (2013) 08 KAR CK 0097

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : Gururaj Joshi, for the Appellant; Shivaswamy, Advocate for R2 and Sri D. Nagaraj, Advocate for R1, R3 and R4-Served-absent, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The legality and correctness of the order passed by the learned Single Judge in W.P. No. 3397/2008, dated 17.06.2010, is called in question in this appeal. Shri. H.S. Mohammad Jafrulla, the third respondent, had availed two loans for purchasing two buses from the appellant from its earlier owners. The loans were transferred to the 3rd respondent and the writ petitioner became a surety for the loan advanced by Karnataka State Financial Corporation (for short "KSFC") in favour of Shri. H.S. Mohammad Jafrulla on the ground that if Shri. H.S. Mohammad Jafrulla failed to discharge the loan, the property of the surety was taken over by the KSFC under Section-29 of the KSFC Act and based on the same, the property of the writ petitioner came to be sold in favour of Sri. Basave Gowda, the second respondent in this appeal.

2. Challenging the legality and correctness of the sale deed executed by the KSFC in favour of Sri. Basave Gowda on 12.02.2008, the writ petition came to be filed contending that the KSFC cannot sell the property of the surety by exercising power under Section-29 of the KSFC Act, without exhausting its remedy by proceeding against the principal borrower at the first instance.

3. The learned Single Judge after hearing the matter relying upon the judgment of the Hon''ble Apex Court in the case of Karnataka State Financial Corporation vs. N. Narasimhaiah and Others, allowed the writ petition holding that sale made by the appellant in favour of Basavegowda is null and void. Challenging the legality and correctness of the order passed by the learned Single Judge, the present appeal is filed.

4. We have heard the learned counsel for the parties.

5. The facts leading to this appeal are undisputed to the following effect: That the appellant had advanced loan to the third respondent in this appeal for purchase of two vehicles and for which first respondent had stood as surety and offered his immovable property as security. It is also not in dispute that on account of non-payment of dues by the principal borrower, the first respondent's property was sold by the appellant, exercising its power under Section-29 of the KSFC Act.

The Hon''ble Supreme Court in Narasimhaiah's case has held that any property given by way of collateral security by a surety cannot be sold by exercising power under Section-29 of the KSFC Act. In the circumstances, we do not see any merit in this appeal. Accordingly, the appeal is dismissed.