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(2008) 02 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16074 of 2004

Kosanam Satish Kumar — APPELLANT

Vs

Andhra Pradesh State Financial Corporation — RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:
State Financial Corporations Act, 1951 — Section 29, 31, 32

Citation : AIR 2008 AP 224 : (2008) 4 ALD 767

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : B. Narayana Reddy, for the Appellant; T. Durga Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This petition is filed questioning the action of the first respondent-A.P. State Financial Corporation (Corporation) in publishing a notice proposing to auction the property of the petitioner given as collateral security for the amount due to it from the principal debtor.

2. The case of the petitioner is that he and one Bairi Sadaiah together established M/s. Bhagyalaxmi Mini Modern Rice Mill at a cost of about Rs. 4.5 lakhs after securing a loan of Rs. 2,36,500/- from the respondent-Corporation, but the respondent-Corporation released only Rs. 1,12,840/- towards the first instalment and did not sanction the second and final instalments and so he and his partner had obtained a loan elsewhere, completed the construction and installation of the Mill and paid an amount of Rs. 90,000/- towards loan amount to the respondent-Corporation and as disputes cropped between him and his partner Sadaiah, he filed a suit in the Court of II Additional Senior Civil Judge, Warangal for dissolution of partnership. While things stood thus, through a registered notice dated 12.10.2001 he informed the respondent-Corporation that Sadaiah is mismanaging the Mill, machinery and requested it to close the account under one time settlement scheme, but without taking his request into

consideration, the respondent-Corporation issued sale notice dated 31.3.2004 that it is going to auction the properties belonging to him and Sadaiah u/s 29 of the State Financial Corporation Act, 1951 (for short ''the Act''). Since the plots advertised for sale were offered as collateral security to the respondent-Corporation, the respondent-Corporation without proceeding to sell the primary security, put those properties to public auction. It came to his notice that in pursuance of the notice published by the respondent-Corporation, it received an offer to purchase 360 square yards for Rs. 44,030/- and thereupon the respondent-Corporation pasted a notice dated 3.9.2004 informing that it is going to finalize the offer made by Smt. B. Srilatha, if no tenders are received higher than the one made by her within one week from that notice and so the action of the respondent-Corporation in issuing sale notice dated 31.3.2004 for sale of his plot No. 34 admeasuring 360 square yards in Sy. No. 625 of Peddamagadda Village is liable to be quashed.

3. On behalf of the respondent-Corporation, the senior Branch Manager filed his counter-affidavit inter alia stating that to its knowledge, petitioner is not the partner of M/s. Bhagyalaxmi Mini Modern Rice Mill to which loan was granted as the proprietary concern belonging to B. Sadaiah. No information was furnished by Sadaiah to the Corporation about his entering into a partnership with the petitioner. Though it sanctioned a term loan of Rs. 2,36,500/- to M/s. Bhagyalaxmi Mini Modern Rice Mill, only Rs. 1,42,090/- was released. The debtor paid only Rs. 90,000/- towards part of interest arrears. Petitioner offered his property as collateral security to the loan sanctioned to M/s. Bhagyalaxmi Mini Modern Rice Mill by hypothecating the property which was advertised for sale in Vaartha Daily News Paper on 31.3.2004 along with the land and buildings belonging to M/s. Bhagyalaxmi Mini Modern Rice Mill as after seizing the unit on 24.6.2003 as per the power vested in it u/s 29 of the Act.

4. An additional counter-affidavit on behalf of the respondent-Corporation is also filed inter alia stating that the interim order dated 30.3.2004 in W.P.M.P. No. 20983 of 2004 directing the petitioner to deposit Rs. 25,000/- within four weeks from the date of order, he paid only Rs. 15,000/- on 20.5.2004 and did not pay the balance amount and so in pursuance of the notification in Eenadu for the sale of land and buildings of M/s. Bhagyalaxmi Mini Modern Rice Mill and its buildings, plant and machinery were sold to T. Satish and others for a total consideration of 1.75 lakhs on 100% down payment basis. As the petitioner did not comply with the conditional order, plot No. 34 admeasuring 365 square yards in Sy. No. 625 of Peddammagada Village was again advertised for sale on 26.8.2004 in Eenadu, but no offer to purchase the said property was received

5. The point for consideration is whether the respondent can proceed against the properties offered as collateral security by the petitioner without his proceeding against the property of the principal debtor on the primary security.

6. The contention of the learned Counsel for the petitioner is that inasmuch as the petitioner is only a surety and as the property belonging to the Rice Mill was

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mortgaged with the respondent-Corporation, it should first proceed against the mortgaged property only and only in case if it is not able to realize the entire amount due to it, can it proceed against the property given as collateral security by the petitioner and so the action of the respondent-Corporation in trying to sell the property of the petitioner given as collateral security in the first instance itself is illegal and hence is liable to be quashed.

7. The contention of the learned Counsel for the respondent- Corporation is that the petitioner in fact deposited his title deeds with the respondent-Corporation as collateral security for the loan sanctioned to M/s. Bhagyalaxmi Mini Modern Rice Mill and since the property of the petitioner is also mortgaged, in view of the ratio in D. Narayana Rao v. A.P. State Financial Corporation, Ranga Reddy (East) Branch, WP No. 403 of 2004 dated 21.6.2005, petitioner is not entitled to any relief because the respondent Corporation has a right to proceed against that property also u/s 29 of the Act. It is his contention that in fact after the Court passed an interim order as the petitioner failed to comply with the conditional order, the property belonging to the Mill was sold but only Rs. 1,75,000/- was realized and for the balance amount due only the property of the petitioner is being sold and so the petitioner is not entitled to any relief.

8. The documents produced by the respondent-Corporation show that the petitioner had deposited original registered Sale Deed No. 75051/80, pahanies etc. In D. Narayana Rao''s case (supra), relied on by the learned Counsel for the respondent-Corporation, it is clearly held that in view of Section 29 of the Act any property mortgaged could be sold by the Corporation without taking recourse to Sections either 31 and 32 of the Act.

9. In fact, another Division Bench of this Court in Grandhi Kamaraj v. Government of Andhra Pradesh 1996 (2) ALD 1193 , clearly held that as the liability of the surety is co-extensive with that of the principal debtor, it is open to the creditor to proceed against either the principal debtor or the surety or both. So the action of the respondent-Corporation in proceeding against the property of the petitioner given as collateral security by way of deposit of title deeds, cannot be said to be erroneous.

10. Nothing is brought to my notice to show that the procedure prescribed for selling the property in public auction is not followed by the respondent-Corporation. In fact, the petitioner admitted about the respondent-Corporation publishing the notice relating to offer received by it in pursuance of the open auction and inviting higher bidders. Therefore, I find no merits in the petition and hence is dismissed with costs.

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