
(2016) 06 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32118 of 2015

Mr. Anantha Reddy Nadeaguoni

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 14

Citation : (2016) 5 ALT 284 : (2016) 6 AndhLD 225 : (2017) 1 DRTC 367

Hon'ble Judges : Sri Sanjay Kumar and Dr. B. Siva Sankara Rao, JJ.

Bench : Division Bench

Advocate : Sri Salvaji Raja Shekar Rao, Advocate, for the Petitioners in W.P. No. 32118 of 2015; Sri Salvaji Raja Shekar Rao, Advocate, for the Respondent Nos. 1 and 2 in W.V.M.P. No. 4850 of 2015; G.P. for Revenue, for the Respondent No. 2 in W.P. No. 32118 of 2015

Final Decision : Disposed Off

Judgement

Sri Sanjay Kumar, J.—;Challenge in this writ petition is to the proceedings dated 16.06.2015 issued by the Collector and District Magistrate, Mahabubnagar, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act of 2002?').

2. By order dated 01.10.2015, this Court granted interim suspension of the impugned proceedings dated 16.06.2015 subject to the petitioners depositing Rs. 30.00 lakh out of which Rs. 15.00 lakh was to be deposited within four weeks and the remaining Rs. 15.00 lakh within six weeks thereafter. It is however an admitted fact that this conditional order has not been complied with.

3. Sri Salvaji Raja Shekar Rao, learned counsel for the petitioners, would however contend that the impugned proceedings dated 16.06.2015 do not satisfy the amended provisions of Section 14 of the Act of 2002 and therefore warrant

interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, notwithstanding the petitioners' failure to comply with the order dated 01.10.2015.

4. Perusal of the amended provisions of Section 14 of the Act of 2002 reflects that after 15.01.2013, a secured creditor who seeks to take recourse to the power of the Chief Metropolitan Magistrate or the District Magistrate thereunder to take possession of the secured asset must file an affidavit duly affirmed by the authorised officer of the secured creditor setting out the particulars detailed in sub-clauses (i) to (ix) of clause (b) of sub-section (1) of Section 14 of the Act of 2002. The second proviso to Section 14 of the Act of 2002 requires the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, to satisfy himself as to the contents of the affidavit received from the authorised officer and thereafter pass suitable orders. Dealing with these provisions in *Standard Chartered Bank v. V. Noble Kumar* (2013) 9 SCC 620, the Supreme Court made it clear that after the amendment of Section 14 of the Act of 2002, the Magistrate concerned can pass suitable orders for taking possession of the secured asset only after being satisfied with the contents of the affidavit and in this regard he would have to record his satisfaction.

5. No doubt, recording of satisfaction in terms of the afore-stated provisions may not require detailed reasons being set out by the Magistrate concerned but there must at least be evidence of application of mind by the Magistrate to the contents of the affidavit to satisfy himself that the statutory requirements have been duly complied with.

6. The impugned proceedings dated 16.06.2015 fall woefully short insofar as this requirement is concerned. There is not even a mention of any affidavit having been filed by the authorised officer of the secured creditor, the fourth respondent herein, much less any satisfaction of the District Magistrate, Mahabubnagar, with regard to the contents thereof.

7. On this short ground, the impugned proceedings dated 16.06.2015 are set aside and the writ petition is allowed. This order shall however not preclude the secured creditor, the fourth respondent, from initiating action afresh under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in accordance with law.

8. The Registrar (Judicial) of this Court is directed to mark a copy of this order to each unit head in the States of Telangana and Andhra Pradesh for onward transmission to all the Chief Metropolitan Magistrates/Chief Judicial Magistrates in the units and also to the District Magistrates for their guidance.

9. Interim order dated 01.10.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.