(2014) 08 AP CK 0143

In the Andhra Pradesh High Court

Case No : W.P. No. 24298 of 2014

Neelam APPELLANT

Vs

State Bank of India, Commercial Branch RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(4), 17

Citation : (2015) 1 ALD 443 : (2015) 3 ALT 444 : (2015) 2 BC 593

Hon'ble Judges : K.C. Banu, J;Anis, J

Bench : Division Bench

Advocate : Milind G. Gokhale, Advocates for the Appellant; Deepak Bhattacharjee, (SC), Advocates for the Respondent

Judgement

K.C. Banu, J.—This writ petition, under Article 226 of the Constitution of India, is filed to declare the action of the respondent-Bank in auctioning the property viz., House No. 9-1-44/2/1-A and 9-1-44/2/5 known as Pratap Theatre, admeasuring 5382.13 square yards or 4500 square meters built up area 18706 square feet in Survey Nos. 140 and 141 (old 144/1) of TS No. 35, situated at Langer House, Hyderabad, as arbitrary and illegal and consequently, direct the respondent-Bank to stop the auction to be held on 28.8.2014. Case of the petitioner is that her husband, who is one of the borrowers, died on 10.6.2013. The aforesaid property was owned jointly by her husband and his brother. After death of her husband, the share in the said property devolved upon her, her minor daughter and son. Without issuing fresh notice under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, ''SARFAESI Act''), the respondent-Bank is proceeding further. Hence, the writ petition.

2. Learned Counsel for the petitioner contended that in view of decision of the Honourable Madras High Court, immediately after the death of original borrower, proceedings initiated under Section 13(4) of the SARFAESI Act, would

automatically stand abated and hence, he prays to admit the writ petition.

3. On the other hand, learned Standing Counsel for the respondent-Bank contended that notice under sub-section (2) of Section 13 of the SARFAESI Act has been issued prior to death of husband of the petitioner; that whereas notice under Sub-section (4) of Section 13 of the SARFAESI Act has been issued after death of husband of the petitioner, who is one of the borrowers; that the petitioner has got an alternative remedy of filing application under Section 17 of the SARFAESI Act before Debts Recovery Tribunal and hence, he prays to dismiss the writ petition.

4. Originally the ground urged in the writ petition is whether the secured creditor can proceed further i.e., immediately after issuance of notice under sub-section (4) of Section 13 of the SARFAESI Act in case the borrower died. Learned Counsel for the petitioner placed reliance on an unreported decision in S. Suhaina Banu and others v. Indian Bank, Arm Branch and others, WP No. 27230 of 2009, wherein it was held thus (Para 6):

"Point No. (i): Whether the notice under Sub-section (2) of Section 13 should be issued to the legal heirs of the deceased borrower/guarantor afresh in the event such borrower/guarantor dies after the service of notice under sub-section (2) of Section 13 of the SARFAESI Act The object of the provisions of sub-section (2) of Section 13 is mainly requiring the borrower/guarantor by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13 of the SARFAESI Act. In that sense, the proceedings initiated against a person while he was alive would automatically stand abated immediately after his/her demise. The only course open to the respondent-Bank is to initiate proceedings by issuance of fresh notice to the legal heirs of the borrower/guarantor, as the case may be, as the legal heirs of the borrower/guarantor will have an opportunity to discharge the liabilities in sixty days. Only in the event of failure to discharge the liabilities in full by the legal heirs, the respondent-Bank could proceed further by issuance of notice under sub-section (4) of Section 13 and duly served or affixed in terms of that provision read with Rule 8 of the Security Interest (Enforcement) Rules. The first point is answered accordingly."

From the above decision, it is clear that the proceedings initiated against a person died, would automatically stand abated and the Bank has to issue fresh notice.

5. But, when an effective alternative remedy is available to the parties, they have to avail the same under Section 17 of the SARFAESI Act. There cannot be any dispute that availability of an alternative remedy is not a bar for invoking jurisdiction under Article 226 of the Constitution of India. At least under three circumstances this Court can exercise the jurisdiction viz., (1) when principles of natural justice have been violated; (2) when the proceedings were initiated

without any jurisdiction and (3) when there is violation of fundamental rights. On this aspect, it is pertinent to refer to a decision reported in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , wherein it was held thus (Para 15):

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

Case of the petitioner does not fall under any one of the three circumstances as mentioned above. Petitioner can as well raise all the contentions before the Debts Recovery Tribunal by filing application under Section 17 of the SARFAESI Act. Therefore, there are no grounds to interfere with auction. The writ petition is devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed leaving open the remedies available to be petitioner under law. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand closed.