(2012) 06 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Appeal 723 of 2012

Smt. Afroz	APPELLANT
Vs	
The Managing Director, A.P.S.F.C., Hyderabad and others	RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29, 31

Citation : (2013) 1 ALT 419

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : Akella Srinivasa Rao, for the Appellant; M.S. Ramachandra Rao Counsel for the Respondent Nos.1 and 2 and Sri V.V. Prabhakara Rao Counsel for the Respondent Nos.3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

HACJ and VVA, J

1. The unsuccessful petitioner questions the order of the learned single Judge dismissing her writ petition. By the writ petition, the appellant - petitioner questioned the action of the respondents - Andhra Pradesh State Financial Corporation (for short, ''the SFC'') u/s 29 of the State Financial Corporations Act, 1951 (for short, ''the Act'') whereunder the property of the petitioner in the capacity of surety was sold for recovery of the dues of the SFC. It is not in dispute that the appellant - petitioner stood as a surety with respect to a loan obtained by the principal borrower, which became overdue. There are certain correspondences between the borrower and the appellant, but ultimately the proposals did not fructify and the SFC exercised its power u/s 29 of the Act and the house property of the appellant was put to sale for recovery of an outstanding amount of Rs.40.86 lakhs. In the writ petition, the SFC filed a counter affidavit based on its record stating that after exercise of powers u/s 29 of the Act advertisements were issued in the newspapers and the plant and the

machinery of the borrower was sold and after adjusting the receivables against the loan outstanding, the SFC proceeded against the property of the appellant. It is stated that the appellant gave consent for such sale and the property of the appellant was sold for an amount of Rs.65.00 lakhs. Out of these proceedings, the SFC recovered its overdue amount of Rs.41.75 lakhs and the balance sale consideration of Rs.23.25 lakhs was received by the appellant from the purchaser - respondent No.4 directly. The SFC produced a letter executed by the appellant dt.23.7.2007 giving consent for sale of her property and giving vacant possession to the purchaser as well as the receipt dt.24.8.2007 whereunder the appellant acknowledged the receipt of Rs.23.25 lakhs from respondent No.4 towards balance sale consideration amount, after adjustment of the dues of Rs.41.75 lakhs. The said receipt also confirms that the vacant possession was given to the purchaser on 23.8.2007. The said consent letter signed by the petitioner and attested by her husband and another witness, as well as the receipt executed in similar manner were produced by the SFC before the learned single Judge. No doubt, the appellant disputed the said documents for the first time by filing a reply affidavit to the counter affidavit and additional counter filed by the SFC.

2. Before the learned single Judge the appellant - petitioner questioned the said sale on the basis of a decision of the Supreme Court in Karnataka State Financial Corporation v. N. Narasimahaiah1, wherein it was held that Section 29 of the Act is not available for the Financial Corporation to proceed against the surety or guarantor and the said provision is available only for proceeding against the principal borrower. As a corollary, the appellant contended that that the action of the SFC in selling her property by exercising powers u/s 29 of the Act is clearly not sustainable in view of the decision of the Supreme Court.

3. It is not in dispute that the appellant has already filed a suit - O.S. No.38 of 2008 before the I-Additional Chief Judge, Secunderabad, against the SFC claiming damages of Rs.50.00 and that the said suit is pending. While the said suit is pending, in view of the decision of the Supreme Court referred to above, the appellant filed the writ petition towards the end of 2008. The learned single Judge on consideration of the matter found that though the declaration of law by the Hon''ble Supreme Court with regard to Section 29 of the Act is clear, the said decision, on facts, is distinguishable so far as the present case is concerned. The learned single Judge, therefore, while dismissing the writ petition gave liberty to the appellant - petitioner to raise all her contentions in the suit which is already pending, as disputed questions of fact cannot be gone into in a proceeding under Article 226 of the Constitution of India.

4. We have heard Sri A. Srinivasa Rao, learned counsel for the petitioner, Sri M.S. Ramachander Rao, learned Standing Counsel appearing on behalf of respondent Nos.1 and 2 (APSFC) and Sri V.V. Prabhakar Rao, learned counsel appearing for respondent No.4.

5. The judgment of the Supreme Court, particularly paragraph 37 clearly

declares the legal position in the following words:

The legislative intent, in our opinion, is manifest. The intention of Parliament in enacting Sections 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern. Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of Section 31 of the Act and not u/s 29 thereof.

In the present case, however, there are three distinguishing features which need to be noticed; one that the appellant has given consent for sale of her house as is prima facie evident from her consent letter dt.23.7.2007, and, two, the appellant had received balance sale consideration of Rs.23.25 lakhs directly from respondent No.4 after adjusting the dues of the SFC to the tune of Rs.41.75 lakhs, and three, the appellant also gave possession of the property to respondent No.4 in the capacity of the purchaser. These circumstances clearly show that the dispute was raised by the appellant with respect to the consent letter and receipt etc., for the first time in this Court to get over the averments of the respondents in the counter affidavits. We have seen the copies of the consent letter and the receipts and prima facie we have no reason to doubt the said letter executed by the appellant. However, since the appellant is disputing the said documents, the genuineness or otherwise of the said documents cannot be gone into in these proceedings under Article 226 of the Constitution of India and the competent Court for that purpose is undoubtedly the Civil Court. Further, the appellant has already filed a suit even before filing the writ petition claiming damages from the SFC and the said suit - O.S. NO.38 of 2008 on the file of the I-Additional Chief Judge, Secunderabad, is still pending.

6. In these circumstances, we are of the opinion that the appellant having acquiesced in the sale of her house property and having received the benefit therefrom and having delivered possession of the said property to the purchaser, she is not entitled to nullify the entire action of the sale of the said house on the basis of the decision of the Supreme Court which was available subsequent to the sale. Further, as mentioned above, as disputed questions of fact are raised by the appellant, the appropriate forum being the competent Civil Court, we are not inclined to interfere with the judgment of the learned single Judge.

7. The appeal is accordingly dismissed. However, if the appellant - petitioner invokes the jurisdiction of the Civil Court on the said disputed questions, as mentioned above, the Civil Court shall adjudicate upon the said questions uninfluenced by any of the observations made hereinabove. No costs.

