

(2007) 09 AP CK 0100

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13387 of 2006

Sri Yarnala Leela Krishna Prasad

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)
Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 17

Citation : (2008) 3 ALD 127 : (2008) 3 BC 325 : (2008) 81 SCL 215

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : I. Maamu Vani, for the Appellant; Ch. Siva Reddy, for the Respondent

Judgement

P.S. Narayana, J.—The Writ Petition is coming under the caption "Interlocutory". However, with the consent of the Counsel on record, the matter is being disposed of finally.

2. This Court ordered Notice before admission on 3-7-2006 and also made an order of status quo for a limited period. Subsequent thereto on 8-6-2007, rule nisi was issued and the interim order also was extended until further orders.

3. The Writ Petition is filed for a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents not to dispossess the petitioners from their lands and houses under the guise of taking recourse to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, in short hereinafter referred to as "Ordinance" by declaring the action of the respondents in proceeding under the Ordinance which had been repealed as illegal, unconstitutional, arbitrary and opposed to the principles of natural justice and to pass such other suitable orders.

4. It is stated that the 1st petitioner had established the business of Cable TV Network and approached the 1st respondent-Bank for loan. The 1st respondent

Bank sanctioned a loan of Rs. 12,50,000 on 14-9-2003. The petitioners 2 to 6 stood as sureties for the loan amount and offered security of agricultural land and their dwelling houses. The petitioner paid Rs. 1,87,250 by 5-10-2004 in instalments and due to some financial constraints, he was not able to pay the instalments after that period. It is further stated that the 1st petitioner requested the 1st respondent to grant some time for repayment of the loan amount and from time to time the 1st respondent had been kind enough to grant time for repayment. Suddenly by notice dated 5-5-2005, the 1st respondent demanded repayment of the entire sum of Rs. 13,47,947. The 1st respondent issued possession notice purporting to be u/s 13(2) of the Ordinance. It is also further stated that under the notice, agricultural lands and dwelling house of the petitioners had been taken possession and we were restrained from transferring by way of sale, lease or otherwise of any of the secured assets. The 1st respondent also mentioned that they would proceed against the petitioners before the Debts Recovery Tribunal for recovery of balance of amount if the dues are not fully satisfied with the sale proceeds of secured assets. It is also further stated that the Ordinance was passed in the year 2002 under which the Banks and Financial Institutions could take possession of the secured assets and could sell the said property. It is also further stated that, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter in short referred to as "Act") came into force on 21-6-2002 and according to Section 42 of the Act, the Ordinance was repealed and hence any action taken or anything done under the said Ordinance would be deemed to have been done or taken under the corresponding sections of the Act. Rules had also been framed under the Act and according to the rules an Authorised Officer who is of a rank not less than a Chief Manager of a Public Sector Bank or equivalent would be authorised to exercise the rights of a secured creditor. A notice will have to be issued calling upon the borrower to repay the amount. If the amount is not repaid within the time specified, the Authorised Officer shall proceed to realise the amount by taking one or more measures as contemplated u/s 13(4) of the Act. It is further stated that the Act was amended by Enforcement of Security Interest and Recovery of Debt Loss (Amendment) Act, 2004. According to the amendment to Section 13, the creditor is afforded an opportunity to raise any objections or submit any representation to the secured creditor against any notice received by him and the secured creditor shall consider such representation, but such a remedy was not available under the Ordinance. It is also further stated that according to Section 31 of the Act, the provisions of the Act do not apply to agricultural land and any property not liable to attachment or sale under the first proviso to Sub-section (1) of Section 60 of the CPC and to any case in which the amount is less than 20 per cent of the principal amount and interest thereon. It is further stated that in the case of the 1st petitioner, the total loan amount was Rs. 12,50,000 and the loan instalment due by the date of notice was about Rs. 1,44,000 which is less than 20 per cent of the amount due and hence the respondents have no jurisdiction to issue possession notice under the Act. It is also further stated that the action of the

respondents is purported to be under an Ordinance which had been repealed. The petitioners cannot avail the remedies available to them which are provided under the amended Act as they were not available to them under the Ordinance. The action of the respondents in taking possession of the agricultural land and dwelling house of the petitioners under a repealed Ordinance is arbitrary, illegal, unconstitutional and opposed to the principles of natural justice. It is also further stated that the officials of the 1st respondent are visiting the petitioners at their house and are threatening to dispossess them if they do not handover the vacant possession to them. It is further stated that the respondents had stated that under the provisions of the Ordinance they can seek the help of Army personnel to see that the petitioners are thrown put of their houses. The officials of the Bank are visiting the premises of the petitioners every day and coercing them to vacate the premises if they do not pay the loan amount. The action of the respondents in demanding the petitioners to handover vacant possession and trying to forcibly evict them from their house is illegal and unconstitutional and against the principles of natural justice. The respondents cannot evict the petitioners without following the due process of Law or the procedure prescribed under the Act. The respondents are purporting to take action under a repealed Ordinance without any authority. If the petitioners are evicted from their houses for no fault of theirs, they will suffer irreparable loss and injury.

5. In the Writ Petition, vacate application WVMP No. 1543/2006 is filed to vacate the interim order passed on 3-7-2006 in WPMP No. 16640/2006 and to pass such other suitable orders. In the counter affidavit filed it is stated that the respondents-Bank sanctioned a loan of Rs. 12,50,000 for establishing his business of Cable TV Network at the request of the 1st petitioner. On 12-9-2003, the 1st petitioner executed the loan documents and petitioners 2 to 5 stood as guarantors. All the petitioners including the 1st petitioner had mortgaged their respective properties by depositing the title deeds towards security for repayment of the loan availed by the 1st petitioner. The 1st petitioner failed to repay the loan as agreed upon and the loan account of the 1st petitioner was classified as Non Performing Asset as per the guidelines of the Reserve Bank of India. It is further stated that to recover the said loan amount, the Bank initiated proceedings under the provisions of the Act and issued notice dated 23-7-2005 u/s 13(2) of the Act demanding the petitioners to repay Rs. 13,31,531 due, with interest within 60 days failing which the Bank will exercise the powers under the Act. In the said notice the Bank had given the particulars of the properties which were charged to the Bank. While sending the said notice, the respondents-Bank used the old format which was printed when the Ordinance was promulgated. Since the petitioners failed to pay the amount due as per the notice u/s 13(2), the Bank issued the notice u/s 13(4) of the Act taking possession of the immovable properties mentioned therein, but the Bank had not taken possession of the agricultural properties as alleged by the petitioners. Since the Bank had initiated proceedings under the Act, the petitioners shall not alienate the secured assets until the debt is discharged and the Bank is entitled to recover the balance

amount after sale of the secured assets by approaching the Debt Recovery Tribunal and, therefore, the notices given u/s 13(2) and 13(4) of the Act are in compliance with the provisions of the Act. It is further stated that the President of India had promulgated the Ordinance which came into force with effect from 21-6-2002 as the Parliament was not in Session.

Thereafter the Parliament passed the Bill and the President assented the Act on 17-12-2002 and the said Ordinance was repealed. The Act also came into force with effect from 21-6-2002 and anything done or any action done under the said Ordinance shall be deemed to have done or taken under the corresponding provisions of the Act. Therefore, the notice u/s 13(2) was issued under the Act even though inadvertently the words "Ordinance" was printed in place of "Act". Since the notice was issued u/s 13(2) of the Act on 23-7-2005 after the amendment of the Act of 2004 dated 11-11-2004, the petitioners had an opportunity to send any representation or objections to the notice u/s 13(2) of the Act. By using the word "Ordinance" in the place of "Act" in the notice u/s 13(2) of the Act, the petitioners were not restrained from making a representation or taking objections u/s 13 of the Act and as the petitioners failed to make any representation or objections to the notice u/s 13(2) of the Act, the Bank had issued notice u/s 13(4) and published the said notice in the newspapers on 6-11-2005 as contemplated in the Act and had taken possession of the properties which are mentioned in the possession notice in accordance with Law. Further, it is stated that the properties which were specified in the notice u/s 13(4) of the Act are not the properties which were prohibited u/s 31 of the Act. The agricultural property was not taken possession u/s 13(4) of the Act. The properties which are mentioned in the notice u/s 13(4) are all the house sites and house properties. Therefore the Bank had not violated any of the provisions under the Act. The amount due by the petitioners is more than Rs. 13 lakhs and not less than 20 per cent of the principal amount of Rs. 12.50 lakhs and interest thereon as alleged by the petitioners. It is further stated that the Bank officials had not threatened the petitioners to dispossess them by taking the help of Army personnel and never used any coercion to pay the loan amount. The respondents-Bank had initiated the action under the Act and issued the statutory notices in accordance with Law. Instead of repaying the loan amount, the petitioners had approached the Court with false and untenable grounds by way of Writ Petition. The Writ Petition is not maintainable and the petitioners had not made out any case for interference under Article 226 of the Constitution of India. It is also further stated that the President of India promulgated the Ordinance on 21-6-2002 as the Parliament was not in Session and in order to replace the Ordinance with Enactment the Bill was introduced and passed by both the Houses of Parliament and the President had given the assent to the Act and the said Ordinance was in the result repealed, even though the Ordinance was repealed, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provision of the Act. As per the Act, the Banks and the Financial Institutions are empowered to

sell the secured assets without intervention of the Courts or authorities. Since the loan account of the 1st petitioner was classified as Non Performing Asset, the respondents-Bank had initiated recovery proceedings under the Act and issued notice u/s 13(2) of the Act on 23-7-2005, but inadvertently instead of the word "Ordinance", the word "Act" was printed and it is only accidental and not intentional. Since the notice u/s 13(2) was issued after the amendment in the Act, the petitioners had an opportunity to raise any objection or make representation to the notice u/s 13(2) of the Act. The petitioners failed to pay the amount due to the Bank within 60 days as demanded in the notice u/s 13(2) of the Act and did not raise any objection. Therefore, the Bank issued the possession notice u/s 13(4) of the Act and published the possession notice in two leading newspapers "The Hindu" and "Eenadu" as contemplated in the Act. As per Section 17 of the Act, if any person including the borrower is aggrieved by any of the measures taken u/s 13(4) of the Act, the Bank may prefer an Appeal by way of an application to Debts Recovery Tribunal and against the orders of the Tribunal there is further Appeal to Debts Recovery Appellate Tribunal u/s 18 of the Act. Even though there are statutory remedies available under the Act, the petitioners had not availed the same and straight away approached the Court under Article 226 of the Constitution of India and obtained interim stay. If the interim orders are continued and the Writ Petition is entertained, the purpose of the Act will be defeated.

6. In the light of the respective stands taken by the parties, it is clear that the Ordinance as such was not in force as on the date of the impugned proceedings. In view of the same, liberty is given to the respondents to further proceed with the matter in accordance with Law

7. With the above observation, the writ Petition as disposed of. It is needless to say that the further proceedings, if any in pursuance of the Ordinance cannot be further proceeded within the light of the liberty which is being given to the respondents in this regard. No order as to costs.