
(2011) 07 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7654 of 2011

Sriramaneni Ramesh Babu and Another

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Income Tax Rules, 1962 — Rule 2
Recovery of Debts Due to Banks and Financial Institutions Rules, 1993 — Rule 61
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17

Citation : (2011) 5 ALD 464

Hon'ble Judges : Ghulam Mohammed, J;G. Chandraiah, J

Bench : Division Bench

Advocate : C. Aravind, for the Appellant; SC for CG for Respondent No. 1, Ch. Siva Reddy, for Respondent Nos. 2 and 3 and C.V. Rafeeva Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This writ petition has been filed seeking for issuance of writ of certiorari and call for the records connected with the tender cum auction sale dated 16.12.2010 in RP No. 35 of 2010 and set aside the tender cum auction sale of all that Flat No. S-5 bearing Municipal No. 8-3-674/S-5, on II Floor of Sikhara Apartments admeasuring 950 sft, including common area together with proportionate undivided share of land admeasuring 30.76sq.yds., situated at Yellareddyguda, Hyderabad and consequently declare the certificate and registration of sale in favour of the 4th Respondent, as illegal, arbitrary and invalid.

2. Brief facts of the case are that the Petitioner availed loan facility from the Central Bank of India, R.P. Road Branch to a tune of Rs. 11.50 lakhs on 24.4.2004 and the said loan is repayable with interest at the rate of 9% per annum. The Petitioner paid installments till September, 2006 and thereafter, he committed default in repayments. Therefore, the bank, in the process of recovery

proceedings, all the notices were issued and the Recovery Officer has conducted the auction, wherein, the auction purchaser was present and participated in the said auction and the said sale was confirmed on 1.3.2011. Thereafter, the Sale Certificate was issued and registered the same.

3. The learned Counsel for the Petitioners would submit that the banker has an obligation of conducting valuation of the schedule property in consultation with the Petitioner prior to fixing the reserve price and intimate the same to the Petitioner but the same has not been done by the bank due to their high-handed dealing in recovery. It is also submitted that prevailing market value of the schedule property as on 6.2.2010 was Rs. 14,52,000/- and the banker has fixed a reserve price of Rs. 11,00,000/- for the property, which is even not sufficient to cover the loan dues of the Petitioner. Further, it is also submitted that no sale can be allowed beyond the decretal amount. In support of his contention, he placed reliance in the case of Balakrishnan Vs. Malaiyandi Konar,

4. The main grievance of the Petitioner is that he was not served with any notice as required under Rule 2 of the Second Schedule of Income Tax Act, 1961.

5. Under those circumstances, if there is any dispute with regard to the sale, Rule 61 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 applies, wherein, the subject of the Application to set aside sale of immovable property on ground of non-service of notice or irregularity, deals with, which reads as under:

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity:--Where immovable property has been sold in execution of a certificate, [such income tax Officer as may be authorized by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that--

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the Applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the Applicant deposits the amount recoverable from him in the execution of the certificate.

6. Be that as it may, u/s 17 of the SARFAESI Act, any aggrieved person can file an appeal before the Debts Recovery Tribunal.

7. Section 17 of the Act reads as under:

Right to appeal:--(1) Any person (including borrower), aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy five per cent of the amount claimed in the notice referred to in Sub-section (2) of Section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

8. As seen from the record, the Petitioner herein did not discharge the liability within the time stipulated, the Respondent-Bank took possession of the schedule property in question and realised the same for a total sum of Rs. 11,00,000/-.

9. The Supreme Court in SLP (c) No. 10145 of 2010 dated 26th July 2010 at Paragraph 27 of the judgment observed as under:

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SRFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.

10. In view of the facts and circumstances of the case and also in view of the above observation of the Supreme Court in SLP (C) No. 10145 of 2010, we are not inclined to go into merits or otherwise of the matter.

11. Accordingly, the writ petition is dismissed. There shall be no order as to costs.