

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

-
WRIT PETITION No.12791 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

Heard learned counsel appearing for the petitioners and also learned counsel appearing for respondent No.2.

This Writ Petition is filed questioning the docket order, dated 17.03.2015, passed in S.A.I.R.No.907 of 2014 by the Debts Recovery Tribunal, Hyderabad, whereby the office objection with regard to the maintainability of the appeal was upheld and the appeal was rejected.

It is the case of petitioner Nos.1 to 3 that they along with their mother, petitioner No.4, succeeded to the schedule property in the aforesaid S.A.I.R. on account of death of their father, late M. Anjaiah, and subsequently, their names were also mutated in Gram Panchayat records and as such, they are absolute owners and possessors of the property in question. On the ground that respondent No.1 has obtained loan from respondent No.2 – Housing Finance Limited by giving the said property as security and defaulted in repaying the same, respondent No.2 initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short, 'the Act'), issued Possession Notice, dated 13.10.2014, and has taken further steps under Section 13 (4) of the Act. Aggrieved by the same, petitioners have filed the present S.A.I.R.. The Registry of the Tribunal has taken objection with regard to the maintainability of the appeal on the ground that I.A.No.664 of 2006 filed by the petitioners in O.S.No.561 of 2006 on the file of II Additional Senior Civil Judge, Ranga Reddy District, seeking temporary injunction in respect of the property in question was dismissed, and placed the matter before the Presiding Officer. The Presiding Officer, by impugned order, dated 17.03.2015, has upheld the objection raised by the Registry of the Tribunal as regards maintainability of the appeal and rejected the appeal on the ground that the civil Court has held that respondent No.1 has valid title to the property in question, which is given as security to respondent No.2.

It is the case of the petitioners that earlier there was dispute between the father of petitioner Nos.1 to 3 and respondent No.1 and as per partition decree, the property in question fell to the share of the father of petitioner Nos.1 to 3 and after his death, the said property was mutated in the name of petitioners. It is their further case that they have also filed O.S.No.561 of 2006 before the II Additional Senior Civil Judge, Ranga Reddy District, seeking

declaration of title and perpetual injunction in respect of the property in question and the same is pending consideration.

On the other hand, it is submitted by the learned counsel for respondent No.2 that inasmuch as I.A.No.664 of 2006 was dismissed by recording a finding that petitioners are not owners of the property in question, they have no right to question the proceedings initiated under Section 13 (2) and (4) of the Act.

Under Section 17 of the Act, there is a remedy of appeal and from a perusal of the said provision, it is clear that 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 make an application along with such fee as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

For the purpose of maintainability of the appeal, it is suffice that if the petitioners show *prima facie* title to the property in question. When it is the case of petitioners that the secured asset fell to the share of the father of petitioner Nos.1 to 3 in a partition decree and after his

demise, the property in question was mutated in the name of petitioners, it is not open for the Tribunal to reject the appeal filed by the petitioners in *limini* in view of the interim order passed by the civil Court in O.S.No.561 of 2006. Whether the appeal is maintainable or not, is the question to be considered at the time of disposal of appeal, but the same cannot be the sole basis to reject the appeal, at this stage.

Further, in the affidavit filed in support of the petition, it is stated that the petitioners are ready and willing to deposit the outstanding amount payable by respondent No.1 in 'no lien' account and respondent No.2 – Bank shall deposit the same in a fixed deposit till the dispute is settled.

In the aforesaid circumstances, we deem it appropriate to dispose of the Writ Petition by setting aside the order, dated 17.03.2015, passed in S.A.I.R.No.907 of 2014 by the Debts Recovery Tribunal, Hyderabad. We further direct the Tribunal to register the appeal filed by the petitioners, under Section 17 of the Act, and consider the same on merits. Further, as the petitioners have stated that they are willing to deposit the outstanding amount payable by respondent No.1 to respondent No.2 - Bank, we further direct that respondent No.2 shall not take any

steps for sale of the property in question on condition of petitioners depositing entire amount due as on today by respondent No.1 to respondent No.2 – Bank within a period of six (6) weeks from today. On such deposit, the entire amount shall be deposited in a Nationalised Bank in an interest earning fixed deposit and such deposit shall be subject to the final orders to be passed in the appeal, by registering the appeal by the Debts Recovery Tribunal, Hyderabad. Further, it is open to the Tribunal to consider the appeal on its own merits by considering the material to be placed by the petitioners as well as respondent No.2 – Bank, and dispose of the same expeditiously.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH

REDDY, J

A.SHANKAR

NARAYANA, J

June 23, 2015

MD