IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT APPEAL No.718 of 2015

Between:

M/s.Sridhar Enterprises, Hyderabad,
Rep. by its Proprietor.

… Appellant

and

Bank of Baroda, Himayathnagar, Hyderabad,
Rep. by its Chief Manager & others.

… Respondents

DATE OF JUDGMENT PRONOUNCED: 20.08.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals ? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the judgment ? Yes/No

HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.718 of 2015

JUDGMENT : (Per Justice R.Subhash Reddy)

This writ appeal is filed under Clause 15 of the Letters Patent, by the petitioner in W.P.No.7462 of 2015, aggrieved by order dated 01.06.2015, passed by the learned single Judge, dismissing the writ petition.

2. In the writ petition, the petitioner has questioned the action of the 1st respondent-bank in issuing auction notice dated 10.03.2015, published in Hans India Newspaper dated 12.03.2015, proposing to auction the movable properties of petitioner i.e. (i) Wheel Loader, (ii) Intermediate Bin (iii) Secondary Crusher-1, (iv) Secondary Crusher-2, (v) Conveyer-2, (vi) Return Conveyor-2, (vii) Finished Product Storage Bin, (viii) Vibrating Screen and (ix) Diesel Generator, on 23.03.2015.

3. The appellant herein has availed certain financial facilities from the 1st respondent for his business purposes. He availed cash credit facility of Rs.190 Lakhs apart from term loan of Rs.50 Lakhs and the loans are

secured by immovable properties belonged to the petitioner. Apart from the immovable properties, there is also a hypothecation agreement between the parties with regard to movable machinery in the petitioner-industry. In view of the default committed by the petitioner in payment of loan, respondents have filed O.A.No.297 of 2013 before the Debts Recovery Tribunal, Hyderabad and also initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

4. In view of the hypothecation agreement, the 1st respondent-bank has taken possession of the hypotheca and taken steps to sell the same in terms of the agreement. At that stage, petitioner has filed the writ petition mainly on the ground that the 1st respondent-bank has no right to sell the movable properties detailed in the auction notice, as much as they have already filed O.A.No.397 of 2013 and also initiated proceedings under the SARFAESI Act. The learned counsel for petitioner has placed reliance on the judgment of this Court in **B.Suresh v. A.P.Mahesh Cooperative Department**[1] and on the judgment of Delhi High Court in **Syndicate Bank v. Official Liquidator, M/s.Prashant Engg.Co. (P) Ltd.**[2]. The learned single Judge, while dismissing the writ petition by impugned order, has held that as much as the machinery which is notified in the sale notice is

covered by the agreement of hypothecation, it cannot be said that the impugned sale by way of auction is unauthorized or unconstitutional. The learned single Judge has also recorded a finding that not only the hydraulic excavators 2 in number are covered by hypothecation but other machinery which is notified for sale is also covered by hypothecation agreement.

5. In this writ petition, it is contended by the learned counsel for petitioner that as much as the 1st respondent-bank has already invoked jurisdiction of the Debts Recovery Tribunal under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 by filing O.A.No.397 of 2013 and also initiated proceedings under the SARFAESI Act, it is not open to seize and sell the machinery covered by hypothecation agreement. Main thrust of the argument of the learned counsel for petitioner is based on Order 2 Rule 2 of CPC and also on the judgment of Delhi High Court in **Syndicate Bank**'s case (2 supra).

6. On the other hand, it is submitted by the learned counsel for 1st respondent-Bank that the steps taken by the respondents are in terms of the hypothecation agreement, as such, it cannot be said that the action on the part of 1st respondent in possessing and auctioning the movable machinery, is either illegal or arbitrary.

7. In this case, it is not in dispute that the machinery

which is taken possession and notified for sale is covered by hypothecation agreement and in terms of the said agreement, it is open for the respondents to take possession of same to realize the amount in case there is default by the petitioner. It is true that the respondents have also initiated proceedings in O.A.No.397 of 2013 for recovery of debt apart from proceedings initiated under the SARFAESI Act, but at the same time, as the machinery is covered by hypothecation agreement, it is always open for the respondents to take steps for possessing and selling the same. We have also perused the judgments relied on by the learned counsel for petitioner, but, as the steps taken by the respondents are in terms of the hypothecation agreement, the petitioner is not entitled to claim bar under Order 2 Rule 2 of C.P.C., and further, having regard to the facts of the case on hand, the judgment of the Delhi High Court in **Syndicate Bank**'s case (2 supra) also would not render any assistance to the case of petitioner. In view of the findings recorded by the learned Single Judge, we are of the view that the action taken by the respondents is in terms of the hypothecation agreement. Further, it is brought to our notice that auction was already conducted and confirmation was stayed in view of the interim order passed by the learned single Judge, but after disposal of the writ petition, even the sale is confirmed in favour of the 3rd party-purchaser and the 1st respondent-bank has recovered the full sale price.

8. For the aforesaid reasons, we do not find any merit in this writ appeal, so as to interfere with the order passed by the learned single Judge. The writ appeal is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

20th August 2015
ajr

[1] 2002 (108) Company Cases 283

[2] AIR 1985 DELHI 256