

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION No.31321 OF 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for 1st respondent. In view of nature of disposal of the present writ petition, notice to respondents 4 to 6 is dispensed with and the case is being disposed of at the stage of admission.

2. The case of the petitioner is that when the 4th respondent was working as Supervisor in the petitioner bank, he misappropriated funds to a tune of Rs.40 lakhs and a criminal case was registered against him. He obtained anticipatory bail and later he expired on 21-09-2014. During his services, he obtained loan of Rs.10,80,000/- from the petitioner bank on 27-11-2010 for purchasing a house. At the time of availing of loan, the 4th respondent gave an undertaking on 19-11-2010 stating that he will keep the property free from all encumbrances. He also created an equitable mortgage by depositing original title deed in respect of plot No.1, ground floor, KSR Residency, bearing Door No.2-7-41, Alapativari Street, Gandhi Nagar, Tenali, Guntur District. His wife, who is natural guardian of the 6th respondent also created a second charge of the said property on 03-01-2013 in favour of the petitioner bank and withdrew a loan amount of Rs.2 lakhs. When disciplinary action was initiated against the 4th respondent, he transferred the property in favour of the 6th respondent under a gift deed, dated 26-07-2013 and when the 4th respondent committed default in payment of the loan amount, the petitioner bank initiated arbitration proceedings, which culminated in passing of an award on 12-06-2014 by the 3rd respondent for a sum of Rs.11,65,715/- with interest at 12% per annum from 01-04-2014 till the date of realization. When a sale notice was issued in pursuance of the said award in E.P.01/2014-15, the same was challenged in O.A.No.82 of 2014 before the Andhra Pradesh Co-operative Tribunal, Vijayawada (for short 'the Tribunal) and the Tribunal passed an order on 12-08-2015 allowing the said application filed by the 6th respondent. Challenging the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that contrary to the undertaking given to the bank by the 4th respondent, the 4th respondent executed a gift deed in favour of the 6th respondent while the property was

under mortgage with the bank.

4. A perusal of the impugned order passed by the Tribunal reads thus:

“In the result, this appeal is allowed: i) setting aside the Form No.,9 notice issued in E.P.No.01/2014-15 and the matter is remanded to the lower Court to conduct fresh enquiry.

ii) this appellant is directed to approach the executing court by filing necessary petition along with documents under which he is claiming the property and to seek for consideration of his claim over the property.

iii) the executing court is directed to implead this appellant, 5th respondent i.e.,Bodduluri Venkata Vamsi Krishna and Bodduluri Prasanna Lakshmi, who is the wife of JDr, in view of death of 1st J.Dr. in E.P.No.01/14-15, here their claim and interest over the property and to dispose of the same as per law. Considering the circumstances, each party do bear their own costs.”

In view of the above direction issued by the Tribunal, this Court is not inclined to interfere with the order passed by the Tribunal. But, however, the 6th respondent is restrained from further encumbering the property, which was mortgaged to the petitioner bank and the 3rd respondent shall consider the application of the 6th respondent consequent to the directions made by the Tribunal in O.A.No.82 of 2014, dated 12-08-2015 as expeditiously as possible preferably within a period of 3 months from the date of receipt of a copy of this order by giving due opportunity to the petitioner herein and the 6th respondent.

5. Accordingly, the Writ Petition is disposed of. No order as to costs. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

A. RAMALINGESWARA RAO,J

DATED: 28-09-2015

Hsd

