

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

WRIT PETITION No.3841 OF 2014

—

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

When this matter has come up for admission, at the request of the learned counsel for both sides, the same is taken up for final disposal.

2. Heard Sri Muddu Vijai, learned counsel for the petitioner, and Sri M.V.K.Viswanadham, learned standing counsel for respondent No.1 bank.

3. The petitioner questioned the notice, dated 22-01-2014, issued by respondent No.1 under Section 13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFEASI Act'), for taking possession of immovable property belonging to the petitioner - guarantor and selling the same for realization of outstanding loan amount in C.C. Account No.1624; before proceeding with the sale of the properties of respondent Nos.2 and 3 - borrowers, as illegal and arbitrary.

4. Facts of the case, in brief, are that respondent No.2 -

M/s. Vasavi Enterprises, represented by its proprietor Sri M. Kishore Verma and respondent No.3, who is none other than the proprietor of respondent No.2, borrowed the loan to a tune of Rs.600 Lakhs from respondent No.1 - Indian Overseas Bank in C.C. Account No.1624. The respondent No.3 mortgaged his properties as collateral security for the same. The petitioner stood as a guarantor for the loan and mortgaged his immovable property bearing

M.No.13-4-752 in Plot No.1, admeasuring 611 square yards, located in Sabjimandi, Sawkari Karwan, Mehdipatnam, Hyderabad, as collateral security. Since respondent Nos.2 and 3 committed default in paying the loan amount, as per the schedule, the C.C. account was declared as LPA, and steps have been initiated under the provisions of SARFEASI Act, and in order to take possession of the property of the petitioner, respondent No.1 issued possession notice, which is the subject matter in this writ petition.

5. The only ground urged by the learned counsel for the petitioner is that though this Court by order, dated 12-02-2014, permitted respondent No.1 to proceed with sale of the properties belonging to the borrowers - respondent Nos.2 and 3, except the property bearing M.No.13-4-752 in plot No.1, admeasuring 611 square yards, located in Sabjimandi, Sawkari Karwan, Mehdipatnam, Hyderabad, belonging to the

petitioner, it has not proceeded against the properties of respondent Nos.2 and 3. It is submitted that, in view of the fact that properties of the borrowers - respondent Nos.2 and 3 are available for realization of the outstanding loan, there is no reason to proceed with the sale of the property belonging to the petitioner.

6. On the other hand, it is submitted by Sri M.V.K. Viswanadham, learned standing counsel, appearing for respondent No.1, that though it is true that property bearing Municipal

No.7-1-307/14/A in plot No.1 in Survey No.22, admeasuring 577 square yards, situated at Subhash Nagar, Bahlookhanguda, Hyderabad is owned by respondent No.3, a writ petition is pending, and further against house property bearing No.645/LIG, Municipal No.15-27-645, admeasuring 111.11 square yards, situated at Kukatpally Housing Board Colony, Kukatpally village, Balanagar Mandal, Ranga Reddy District, Hyderabad, a suit is pending. He further submitted that liability of the petitioner is co-extensive with that of borrowers and, as such, it is open for respondent No.1 to take steps for sale of the property of the petitioner, who is a guarantor. He also placed reliance on the decision of the Hon'ble Supreme Court in **United Bank of India v. Satyawati Tondon and others**^[1], wherein, the Hon'ble Supreme Court relying on its earlier decisions in **Bank of**

Bihar Ltd. V. Damodar Prasad^[2], State Bank of India v. M/s. Indexport Registered and others^[3], and Industrial Investment Bank of India Limited v. Biswanath Jhunjhunwala^[4], held that it is open for the authorities to proceed with the properties of the guarantors even without initiating action against the borrowers.

7. In view of the principle laid down in the aforesaid decision (Supra 1), the contention of the learned counsel for the petitioner cannot be accepted.

8. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

9. As a sequel, miscellaneous petitions, if any, pending in this writ petition stand closed.

**R. SUBHASH
REDDY, J**

A. SHANKAR NARAYANA, J

**June 25, 2015.
Mgr**

^[1]. 2010 (8) SCC 110

^[2]. (1969) 1 SCR 620

[\[3\]](#). (1992) 3 SCC 159

[\[4\]](#). (2009) 9 SCC 478