HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.24780 of 2007

O R D E R:

Heard Sri B. Adinarayana Rao, learned senior counsel for the petitioners and Sri P. Veera Reddy, learned senior counsel for Respondent Nos.2 and 3.

2. The first petitioner claims that his father is a partner in M/s Ganesh Gayathri Aqua & Agri Farms, Jidugu Village, Amaravathi Mandal, Guntur District. The said firm obtained various loans from the second respondent for the purpose of carrying on its' business. The petitioners stood as sureties/guarantors for the loan taken by creating equitable mortgage over the properties held by them for a sum of Rs.30 lakhs. The firm committed default in repayment of the loan to a sum of Rs.95,40,809/-. The assets offered as security for the loans were taken possession by the second respondent by proceedings dated 03.07.2007. The said action was taken under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (for short 'SARFAESI Act'). Thereafter, the third respondent issued a notification for sale of the properties and the sale was scheduled to be held on 03.12.2007. A notice was published on 02.11.2007 to that effect. In these circumstances, the petitioners filed the present writ petition challenging the action of the first respondent in specifying the cooperative bank as 'Bank' within the meaning of SARFAESI Act by notification No.S.O.105 (E) dated 28.01.2003.

3. This court, in view of the decision of the Supreme Court in '*Greater Bombay Co-op. Bank vs. United Yarn Tex*' (2007(5) Scale 366), granted stay on the ground that the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002, was not applicable to the Cooperative Societies.

4. Seeking vacation of the said order, respondent Nos.2 and 3 filed WVMP No.3427 of 2007.

5. Learned senior counsel appearing for the second respondent submits that after filing of the said writ petition, Section 56 of the Banking Regulation Act, 1949 was amended in furtherance of the Banking Laws (Amendment) Act 2012, which came into force from 05.01.2013. By virtue of the Amendment to Section 56 of the Banking Regulation Act, the definition of Bank includes Co-operative Banks.

6. A similar notification issued by the Central Government dated 28.01.2003 came up for consideration in '*Inder Raj Agarwal vs. Union of India'*, reported in [2015(6) ALD 376 (DB)]', wherein the Division Bench of this court considered the said issue. This court noticed the decisions rendered by the High Courts of Bombay, Karntaka, Kerala, Madras, Madhya Pradesh and Punjab & Haryana, holding that Union of India has power to bring the Cooperative Banks within the purview of the SARFAESI Act. This court also noticed the different view taken by the Division Bench of the Gujarath High Court. Ultimately, no finding was given with regard to impugned notification of the Union of India in the said case.

7. However, in view of the inclusion of the Cooperative Banks in the definition of 'Banks' under Section 2(1)(c)(v) of the SARFAESI Act, without making challenge to the said definition, the challenge to the notification of Union of India, does not survive.

8. In the circumstances, the writ petition is dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand dismissed in consequence.

A. *RAMALINGESWARA RAO, J*

Date: 30.12.2016
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