THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.27784 of 2015

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Dated 25th July, 2016

Between:

Indian Overseas Bank

.....Petitioner

And

Debts Recovery Tribunal, Triveni Complex (5th Floor), Abids, Hyderabad and another

.....Respondents

Counsel for the petitioner: Sri M.V.K.Viswanadham

Counsel for Respondent No.2: Sri M.Hamsa Raj

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.27784 of 2015

ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a mandamus to set aside order, dated 21.08.2015/25.08.2015, in Securitisation Appeal No.385 of 2015 of respondent No.1.

I have heard Sri M.V.K.Viswanadham, learned counsel for the petitioner, and Sri M.Hamsa Raj, learned counsel for respondent No.2.

Respondent No.2 has borrowed money from the petitioner and committed default in repayment thereof. The petitioner has therefore invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') by issuing a notice under Section 13(2) thereof. As respondent No.2 failed to comply with the said notice by repaying the loan amount, a possession notice as well as sale notice were issued under Section 13(4) of the SARFAESI Act. At this stage, respondent No.2 has approached respondent No.1-Tribunal by filing the aforementioned appeal. By the impugned order, respondent No.1 has partly allowed the appeal by setting aside the possession notice, dated 08.07.2014, and directing the petitioner to re-deliver the possession of the schedule property to respondent No.2 within fifteen days. Respondent No.1 has also granted the consequential order of setting aside the sale notice, dated 23.07.2015, with liberty to the petitioner to proceed *de novo* from the stage of possession notice.

Though the petitioner has questioned the aforementioned order of respondent No.1 on multiple grounds, Sri M.V.K.Viswanadham, learned counsel for the petitioner, has mainly emphasised upon the ground that Sri B.V.Koteshwara Rao, Chairman of respondent No.2-Company, failed to produce any authorisation from respondent No.2-Company to represent it before respondent No.1. He has invited this Court's attention to paragraph-2 of the impugned order of respondent No.1, wherein the latter has referred to the submission of the learned counsel to the above effect. He has, however, submitted that having referred to his submission, respondent No.1 failed to render any finding thereon. The learned counsel placed reliance on the judgment of the Apex Court in **State Bank of Travancore v. M/s.Kingston Computers (I) Pvt.Ltd.,**[1] in support of his submission that a Company cannot be represented by a person without proper Board resolution.

On behalf of respondent No.2, its Chairman has filed a counter affidavit, wherein he has denied the plea of the petitioner that he had no authorisation to file the appeal. He has asserted that respondent

No.2 has authorised him to sign vakalath, petition, application and appeals to be filed in the Courts on behalf of the Company in its Board meeting held on 07.11.2012. Along with the counter affidavit, he has also filed the purported extract of the minutes of the resolution, dated 07.11.2012.

During the hearing on 18.07.2016, this Court has adjourned the case to enable the learned counsel for respondent No.2 to produce the Register of Resolutions maintained by respondent No.2. Today, at the hearing, the learned counsel submitted that the Register of Minutes is not available.

In **State Bank of Travancore** (supra), the Supreme Court has set aside the decree passed in a suit filed by a Company on the ground that the decree holder has not produced any evidence to prove that Shri Ashok K.Shukla was authorised to file the suit on behalf of the Company. Referring to the purported letter of authority issued by a person who described himself as the Chief Executive Officer of the Company, the Supreme Court held that the same was nothing but a scrap of paper in the absence of any resolution passed by the Board of Directors delegating its powers to the said person to institute the suit on behalf of the Company.

Though a specific plea has been raised by the petitioner as evident from the impugned order itself, respondent No.2 has not produced the Board resolution before the Tribunal. For the first time, purported minutes of the resolution have been produced along with the counter affidavit. Failure of respondent No.2 to produce the register of resolutions coupled with the fact that he did not produce such resolution before respondent No.1 leave no room for doubt that respondent No.2 had evidently brought such evidence into existence only to circumvent the formidable legal objection raised by the petitioner regarding the maintainability of the appeal before respondent No.1.

In the light of the above discussion, we are of the opinion that the very appeal instituted in the name of respondent No.2 by its Chairman in the absence of proper authorisation by the Board of Directors itself was not maintainable and consequently, respondent No.1 ought not to have entertained the appeal and passed the impugned order.

For the aforementioned reasons, the impugned order is set aside and the writ petition is allowed.

As a sequel to disposal of the writ petition, WP.MP.No.36059 of 2015 and WV.MP.No.2211 of 2016 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

25th July, 2016
VGB

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[1] Civil Appeal No.2014 of 2011, dated 22.02.2011