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

WRIT PETITION No.10015 of 2016

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29.07.2016

Between:

Sardar Avathar Singh

..Petitioner

And

The Andhra Pradesh State Finance Corporation,
Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.P.Ravi Kiran

Counsel for the respondents: --

The Court made the following:

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

This writ petition is filed by the guarantor for the loan obtained by respondent No.3 from respondent No.1, with the prayer to declare the action of respondent No.2 in proceeding against the property of the petitioner without first enforcing the security of respondent No.3 as illegal and arbitrary.

2. I have heard Mr.P.Ravi Kiran, learned counsel for the petitioner and perused the record.

3. Admittedly, the petitioner is a guarantor and he has furnished the security by mortgaging his property for the loan advanced by respondent No.1 to respondent No.3. Section 13(11) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') reads as under:

“13. Enforcement of security interest:-

(11) Without prejudice to the rights conferred on the secured creditor under or by this Section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.”

From the aforementioned provision, it is clear that a creditor has unfettered right to proceed either against the principal borrower or against the guarantors or against both at his discretion. Therefore, the petitioner has no right to insist that before proceeding against his property, respondent No.1 has to necessarily proceed against respondent No.3.

4. In the above view of the matter, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

5. As a sequel to dismissal of the writ petition, W.P.M.P.No.12658 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

29th July, 2016
GHN