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

WRIT PETITION NO.28944 OF 2016

DATED:29-08-2016

Between:

Gulla Kannamma Naidu … Petitioner

And

The State Bank of India (ADB)
Parvathipuram Branch
Vizianagaram District
Rep. by its Branch Manager …Respondent

COUNSEL FOR THE PETITIONER: Mr. B.S.S. Prasad

COUNSEL FOR THE RESPONDENT: Mr. Maruti Jadav,
for Mr. B.S. Prasad

THE COURT MADE THE FOLLOWING:

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

This writ petition is filed for a mandamus to set aside the demand notice dt.11.7.2016 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

The main plea on which the petitioner filed this writ petition is that having filed O.S. No.75 of 2014 in the Court of the Senior Civil Judge, Parvathipuram, for recovery of the amount, it is not permissible for the respondent to initiate measures under the SARFAESI Act for recovery of the amount.

Mr. Maruti Jadav, learned counsel representing Mr. B.S. Prasad, learned counsel for the respondent, submitted that mere pendency of proceedings under any other law is not a bar for initiating measures under the SARFAESI Act. In support of his submission, he placed before this Court the judgment in *Transcore v. Union of India*[1].

Under Section 37 of the SARFAESI Act, the provisions of Act or the Rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force. In *Transcore* (1 supra), the secured creditor has initiated measures under the SARFAESI Act, while an O.A. before the Debts Recovery Tribunal (DRT) for recovery of amount under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was pending. The Supreme Court held that withdrawal of the O.A. pending before the DRT is not a condition precedent for taking recourse to SARFAESI Act. In view of the law declared by the Supreme Court as above, the plea of the petitioner referred to above has no merit.

[1] (2008) 1 SCC 125

There is one other reason for which the writ petition is liable to be dismissed, namely, that the borrower or any person aggrieved by a notice under Section 13(2) of the SARFAESI Act is not entitled to avail any legal remedy against the notice. Under sub-section (3A) of the Section 13 of the Act, if the borrower or any person raises any objection to the contents of the notice issued under sub-section (2) thereof, he is entitled to file objections. Therefore, we do not find any reason as to why the petitioner shall not submit his reply by raising legally permissible objections, including the one pertaining to the alleged loan waiver. If such objections are filed within one week from today, the respondent shall consider the same and communicate its decision before initiating further measures.

Subject to the above directions, the writ petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P. No.35833 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

29-08-2016

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