

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

WRIT PETITION No.20538 of 2016

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03.08.2016

Between:

Syndicate Bank, Vijayawada and another

..Petitioners

And

M/s.Costal Andhra Agri. Feed Technologies, Kakinada and others

..Respondents

Counsel for the petitioners: Mr.A.Krishnam Raju

Counsel for respondent No.1: Mr.K.V.Ramanaiah Naidu – party-in-person

Counsel for respondent Nos.2 and 3: --

The Court made the following:

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

Feeling aggrieved by the order, dated 28.10.2015, of respondent No.3 Tribunal, whereby it allowed I.A.No.512 of 2014 in Securitisation Appeal No.108 of 2010 filed by respondent No.1, the creditor bank has filed this writ petition.

2. We have heard Mr.A.Krishnam Raju, learned counsel for the petitioners, and Mr.K.V.Ramanaiah Naidu, the proprietor of respondent No.1 proprietary concern.

3. Assailing the sale notice and also the notices issued under Sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), respondent No.1 filed the aforementioned Securitisation Appeal before respondent No.3. Pending the said appeal, respondent No.1 filed the I.A. referred to above, for amending the prayer in the appeal, in order to question the sale and its confirmation. The petitioners opposed the said I.A., by stating that the proposed amendment is barred by limitation. The Tribunal, however, allowed the said I.A., by observing that the proposed prayers are formal in nature.

4. Having considered the facts referred to above, we are of the opinion that the Tribunal has not committed any error in allowing the aforementioned I.A., as the sale and its confirmation are consequential to the measures taken under Section 13(4) of the SARFAESI Act. Even in the absence of formal prayer of setting aside the auction, respondent No.1 would succeed in the appeal, if he is able to prove that the measures taken under Section 13(4) of the SARFAESI Act are contrary to the provisions of the SARFAESI Act. At any rate, the issue of limitation being a mixed question of fact and law, the petitioners can always raise the same in the Securitisation Appeal, even after the

prayer therein is amended.

5. In the light of the above discussion, the Writ Petition is dismissed, subject to the observations made hereinbefore.

6. As a sequel to dismissal of the writ petition, W.P.M.P.Nos.30303 and 31603 2016 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

03rd August, 2016
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