

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 44393 of 2016

ORDER: (*Per VRS,J*)

The petitioners, who are both borrower as well as children of one of the sureties, have come up with the present writ petition, challenging a possession notice issued under Section 13(4) of the SARFAESI Act, 2002.

2. Heard Mr. Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioners.

3. The 4th petitioner in the writ petition was running a business under the name and style of "M/s. Alfa Marketing Agencies", as its sole proprietor. Admittedly, he borrowed a loan from the respondent-Bank for business purposes. Even according to him, his mother, Smt. Ashraf Begum as well as one other person, by name, Mr. T. Ganesh, stood as sureties.

4. On the allegation that the account became a non-performing asset, the respondent-Bank issued a notice under Section 13(2) on 16.06.2014. It was followed by a possession notice. Thereafter, the

respondent-Bank approached the District Magistrate, Adilabad, and obtained an order, dated 06.03.2016, under Section 14.

5. On the basis of the order passed under Section 14, the Bank Manager attempted to take possession on 28.05.2016. Challenging the attempt to take possession, the 4th petitioner, who is the borrower, filed a writ petition in W.P.No.17002 of 2016. His main contention in the said writ petition was that his mother, Smt. Ashraf Begum, who was one of the sureties, died on 11.08.2014, and that, therefore, the steps taken under Section 13(4) as against a dead person were vitiated and were null and void. Accepting the said contention, a Bench of this Court allowed W.P.No.17002 of 2016, by an order, dated 23.06.2016, however with liberty to the respondent-Bank to proceed afresh.

6. On the basis of the liberty so granted, the respondent-Bank has issued a fresh possession notice, dated 17.11.2016, challenging which, the borrower as well as the legal heirs of the deceased surety, have come up with the present writ petition.

7. The main contention of the learned counsel for the petitioners is that once the measures taken under Section 13 as against a dead person, are found to be null and void, the respondent-Bank is not entitled to fall back upon the very same notice under Section 13(2), to

issue a notice under Section 13(4). In other words, his contention is that the Bank ought to have started afresh from the stage of Section 13(2), so that the petitioners have an opportunity to make payment within 60 days under the provisions of the SARFAESI Act.

8. The above contention *prima facie* appears to be very attractive. But, on a deeper scrutiny, we can understand that it cannot hold water.

9. The first reason is that the original notice under Section 13(2) was issued on 16.06.2014. The mother of the 4th petitioner died only on 11.08.2014. Therefore, the nullity was in respect of the notice under Section 13(4) and not in respect of the notice under Section 13(2).

10. Yet another fact is that the notice under Section 13(2), dated 16.06.2014, was not merely issued to Smt. Ashraf Begum, but also issued to the 4th petitioner and the other surety. Therefore, there was nothing wrong in the respondent-Bank issuing a fresh possession notice under Section 13(4).

11. Heavy reliance is placed upon the decision of a Division Bench of the Madras High Court in *Sheeba Philominal Merin Vs. Repatriates Co-op. Finance and Development Bank Limited (Govt. of India Enterprise), Chennai*¹, by the learned counsel for the

¹ LAWS (MAD)-2010-8-590

petitioners. But, the said case arose out of allegations of fraud. This is not a case where there is any allegation of fraud.

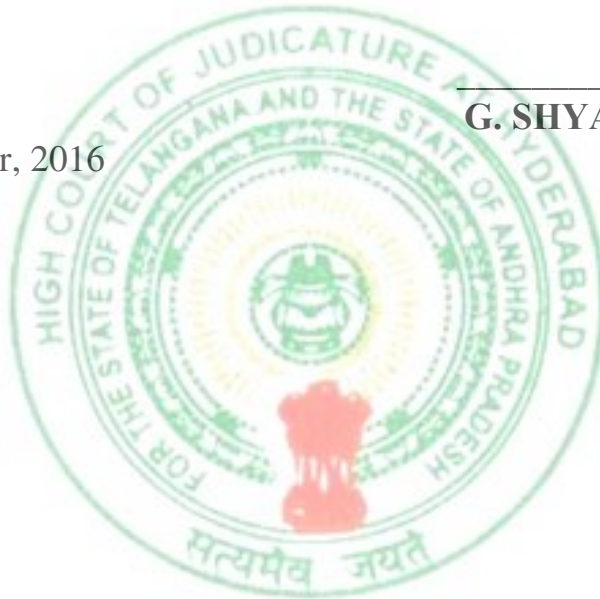
12. Therefore, the Writ Petition is dismissed. It is open to the petitioners to move the Tribunal.

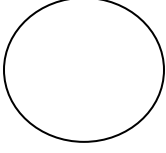
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

20th December, 2016
cbs





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