

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

WRIT PETITION NO.28914 OF 2016

DATED:29-08-2016

Between:

Smt. Tippaluri Govindamma ... Petitioner

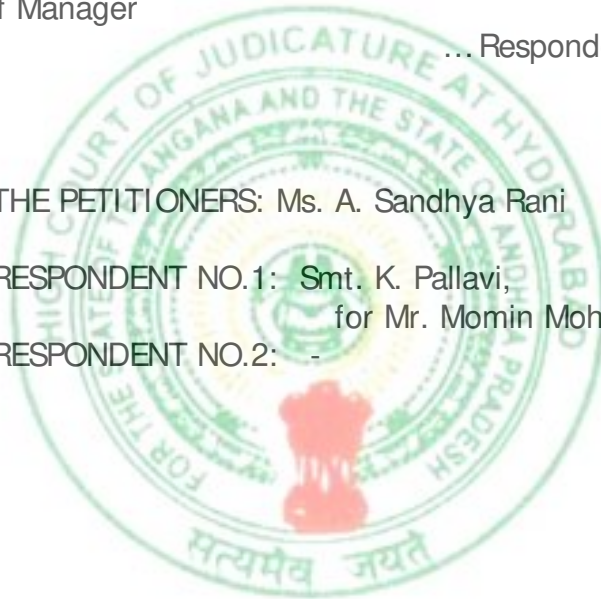
And

Indian Overseas Bank,
Ongole Branch,
Situated at 349/1/37, GNT Road
Prakasam District
Rep. by its Chief Manager
and another ... Respondents

COUNSEL FOR THE PETITIONERS: Ms. A. Sandhya Rani

COUNSEL FOR RESPONDENT NO.1: Smt. K. Pallavi,
for Mr. Momin Mohammed Rafiq

COUNSEL FOR RESPONDENT NO.2: -



THE COURT MADE THE FOLLOWING:

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

The petitioner, who claimed to be the guarantor –cum- tenant of the secured asset belonging to respondent No.2 which was mortgaged to respondent No.1, filed this writ petition, feeling aggrieved by order dt.8.7.2016 in CrI.M.P. No.176 of 2016, on the file of the Chief Judicial Magistrate -cum- Principal Senior Civil Judge, Ongole.

The petitioner had set up an oral tenancy. In our opinion, in a writ petition under Article 226 of the Constitution of India, it is not possible for this Court to adjudicate upon the existence or otherwise of the oral tenancy. Under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended by Act No.44 of 2016, any person aggrieved by any of the security measures is entitled to file an appeal before the Debts Recovery Tribunal (DRT) and if he satisfies the DRT that he is an aggrieved person and that the security measure is illegal, he is entitled to restoration of possession of the secured asset, even if he is not a borrower. In view of the availability of the effective alternative remedy, we are not inclined to entertain the writ petition for adjudication on merits. The petitioner is, however, permitted to avail the afore-mentioned remedy before the DRT.

Subject to the liberty given to the petitioner as above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.35792 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

29-08-2016
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