

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

W.P.No. 9498 OF 2016

DATED 22ND SEPTEMBER, 2016

Between:

M/s. Samrat Dairy Private Limited,
Rep. by its Chair Person
Smt. T.Srinaga Jyothi,
R/o Flat No. 104, Smrithi Block,
Medha Rejoice, Radha Krishna Nagar,
Aattapur, Hyderabad - 500048

... Petitioner

AND

State Bank of Travancore,
Rep. by its Assistant General Manager,
Jubilee Hills, Road No. 36,
Hyderabad, and others

... Respondents

Counsel for the petitioner : Sri T.C.D.Sekhar

Counsel for respondent Nos. 1 & 2 : Sri A.Krishnam Raju

Counsel for respondent Nos. 3 to 6 : --

THE COURT MADE THE FOLLOWING

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

Feeling aggrieved by order dated 10-02-2016 of respondent No. 4, whereby he has rejected an application in recovery proceedings, the unsuccessful applicant-certificate debtor filed this Writ Petition.

2. The facts, in brief, leading to the filing of this Writ Petition are that the petitioner has obtained loan from respondent No. 2-bank in the year 1995. As the petitioner failed to repay the same, respondent No. 2 filed O.A.No. 386 of 2006 for recovery of the loan amount. Respondent No. 3 allowed the said O.A. by order dated 12-11-2007 with a direction to issue recovery certificate in favour of respondent No. 2 for an amount of Rs. 1,58,30,289-35 ps. with interest at 17.34% per annum with quarterly rests and for an amount of Rs. 20,50,100-35 ps. in respect of C.C. limit with interest at 19.38% per annum with quarterly rests on Rs. 1,37,80,189/- from the date of application till realization to be recovered from the petitioner and respondent Nos. 2 to 6 jointly and severally. In pursuance of the said order, a recovery certificate was issued, following which the mortgaged property belonging to the petitioner was sold in the auction conducted on 04-08-2009. The sale was assailed in W.P.No. 27178 of 2010. By order dated 28-03-2011, a Division Bench of this Court dismissed the said Writ Petition. Feeling aggrieved by the said order, the petitioner has filed a special leave petition. An *interim* order was passed by the Supreme Court on 09-12-2011, wherein it was observed that out of the total amount of Rs. 76.75 lakhs, the petitioner has deposited Rs. 18 lakhs and that it has undertaken to deposit the balance amount before the Supreme Court within four weeks. A direction was, therefore, granted by the Supreme Court that on the deposit of the said amount, notice be issued and *status quo* as of the date of passing of the order shall be maintained by the parties until further orders. By order dated

17-02-2014, the Supreme Court has dismissed the special leave petition with liberty to the petitioner to withdraw the amount deposited by it. By another order dated 13-10-2014, the Supreme Court directed that its registry shall issue a fresh demand draft in place of a surrendered demand draft with liberty to the petitioner to deposit the demand draft in any bank barring respondent No. 2-bank. It was further observed that after the amount under the demand draft is credited to the petitioner's bank account, the same shall not be withdrawn for a period of six weeks and that similarly, the respondent No. 2-bank shall not give effect to the order of attachment already in vogue during that period. Liberty was left with the petitioner to assail the order of attachment passed by respondent No. 4 by way of preferring an appeal and seek appropriate *interim* order as advised in law. The Supreme Court further clarified that apart from issuing the aforementioned directions, it has not expressed any opinion on the merits of the case.

3. After the aforementioned order of the Supreme Court was passed, at the instance of respondent No. 2, an order of attachment was made on 30-12-2015 in respect of the amount received by the petitioner from the Supreme Court by way of demand draft and deposited in respondent No. 5-bank. The application filed by the petitioner for raising the attachment was dismissed by respondent No. 4 by the order impugned in this Writ Petition.

4. At the hearing, learned counsel for the petitioner advanced a twofold submission, namely; 1) that when respondent No. 2 sought for permission of the Supreme Court to permit it to receive the amount deposited by the petitioner in pursuance of the *interim* order granted in the special leave petition, such a permission was declined and, therefore, respondent Nos. 1 and 2 are not entitled to attach the amount which was received by the petitioner from the Supreme Court and deposited in respondent No. 5-bank and 2) that the amount attached

by respondent No. 4 is not included in the recovery certificate issued by respondent No. 3 and that, therefore, respondent No. 4 cannot attach the same.

5. Sri A.Krishnam Raju, learned counsel appearing for respondent Nos. 1 and 2, submitted that order dated 13-10-2014 of the Supreme Court, whereby it has directed a fresh demand draft to be issued to the petitioner for the amount deposited by it in pursuance of the *interim* order granted in the special leave petition, has not prevented respondent Nos. 1 and 2 from attaching the said amount and that the very fact that the Supreme Court has restrained the petitioner from withdrawing the amount after deposit in a bank for a period of six weeks, itself shows that respondent No. 2 is left free to enforce the attachment or seek a fresh attachment.

6. As regards the second submission of the learned counsel for the petitioner, that unless the property either movable or immovable is included in the recovery certificate issued by the presiding officer, the recovery officer has no jurisdiction to attach or order sale, learned counsel for respondent Nos. 1 and 2 submitted that there is no restriction on the recovery officer to proceed with any property even if it is not included in the recovery certificate issued by the presiding officer.

7. With respect to the first submission of learned counsel for the petitioner, we do not find any merit therein. The amount attached by respondent No. 4 was initially deposited by the petitioner in pursuance of a conditional *interim* order granted by the Supreme Court pending the special leave petition. While dismissing the special leave petition, the Supreme Court has directed the said amount to be returned to the petitioner. Though respondent No. 2 has filed an application to permit it to receive the amount deposited by the petitioner in the

Supreme Court, such a permission was declined. However, while directing the money to be paid to the petitioner by way of demand draft, the Supreme Court has restrained the petitioner from withdrawing the same for a period of six weeks evidently to enable respondent No. 2 to take appropriate legal steps for recovery of the said amount. Otherwise, it was wholly unnecessary to direct the petitioner not to withdraw the amount for a period of six weeks. In the absence of any restraint order from the Supreme Court, respondent No. 2 is entitled to attach the amount deposited by the petitioner in respondent No. 5-bank.

8. For the aforementioned reasons, the first submission of learned counsel for the petitioner is rejected. As regards the second submission, in para No. 15 of the affidavit filed by the petitioner, in support of its application for raising attachment before respondent No. 3, it has specifically averred that respondent No. 4 has no jurisdiction or power to attach the property which is not mentioned in the recovery certificate issued by the presiding officer. In support of this submission, the petitioner has referred to and relied upon the judgment of a Division Bench of this Court in ***Estate Officer and Manager (Recoveries), A.P. Industrial Infrastructure Corporation Limited, Hyderabad, and others Vs. Recovery Officer, Debts Recovery Tribunal, Bangalore, and others***¹.

9. From the impugned order, we find that respondent No. 4 has not dealt with this aspect at all. In our opinion, when the petitioner has raised a legal issue before respondent No. 4, he is bound to consider the same. Since this issue has not been considered, we feel it appropriate to remand the matter to respondent No. 4 only for the limited purpose of deciding the issue as to whether he can attach the property which is not included in the recovery certificate issued by the presiding officer of respondent No. 3. The entitlement of respondent Nos. 1 and

¹ 2003 (5) ALD 599 (D.B.)

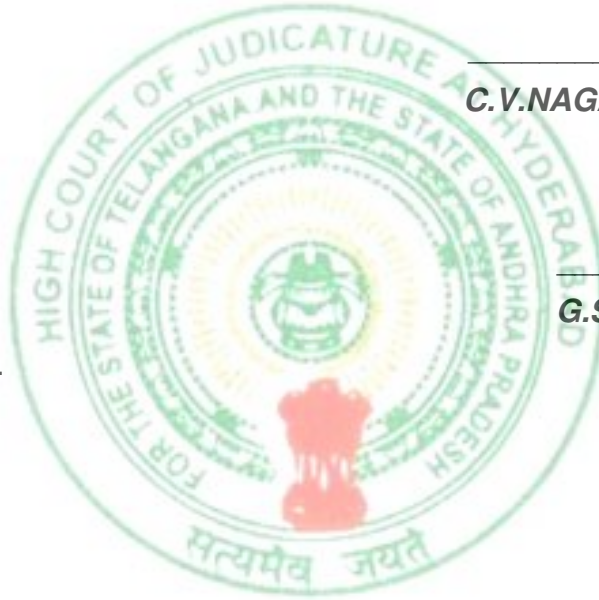
2 to recover the amount lying with respondent No. 5 depends upon the finding of respondent No. 4 on this issue. Respondent No. 4 shall decide this issue, within one month from the date of receipt of a copy of this order, after hearing both sides.

10. Subject to the above direction, the Writ Petition is disposed of.

11. As a sequel to disposal of the Writ Petition, W.P.M.P.Nos. 12014, 12015 and 39878 of 2016 and W.V.M.P.No. 1204 of 2016 shall stand closed as infructuous.

Date: 22-09-2016.

JSK



C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.