

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

AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

W.P.No. 20012 OF 2016

DATED 29TH SEPTEMBER, 2016

Between:

The Cosmos Co-Operative Bank Limited,
Hyderabad Branch, Prathima Schallas,
3-5-798, King Koti Road, Hyderabad,
Rep. by its Assistant General Manager ... Petitioner

AND

The Debts Recovery Tribunal,
At 5th Floor, Triveni Complex,
Abids, Hyderabad,
Rep. by its Registrar and others Respondents

Counsel for the petitioner : Smt. V.Dyumani

Counsel for respondent No. 1 : --

Counsel for respondent Nos. 2 to 4 : Sri T.Bala Mohan Reddy

Counsel for respondent No. 5 : --

THE COURT MADE THE FOLLOWING

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

The mortgagee bank filed this Writ Petition feeling aggrieved by order dated 16-05-2016 in SA/155/2016 on the file of respondent No. 1.

2. Respondent Nos. 2 to 4 and one Juturu Venkateshwara Ravi Prasad, son of respondent No. 2, along with five others mortgaged the property admeasuring 2,655 square yards in survey Nos. 403/2, 404/A and 404/B2 (sub division survey Nos. 403/2A3, 404B/2C and 404A/3) of Kallur Village, Bellary Road, Kurnool, and registered the mortgage deed dated 05-11-2014 in favour of the petitioner as a security for sanction and payment of loan amounts. As the mortgagors failed to repay substantial part of the loan amount, the petitioner has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). A possession notice was issued on 10-02-2016 under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002. Assailing the said possession notice, respondent Nos. 2 to 4 filed S.A.No. 155 of 2016 before respondent No. 1 under Section 17 of the Act. One of the pleas raised by them before respondent No. 1 was that as per the registered gift deed No. 4739 dated 17-07-2009, only an extent of 1,327.50 square yards was bequeathed in favour of Juturu Venkateshwara Ravi Prasad (Additional Director, Guarantor – cum – Mortgagor) and that, therefore, the petitioner cannot initiate securitization measures for the property in excess of the said extent. This plea was found favour with by respondent No. 1 which has passed the impugned order, wherein it has *inter alia* observed thus:

"It appears, prima facie, that while Bank issuing Possession Notice has ignored the fact that premises belongs to the Applicant is mortgaged to the extent of 1327.5 Sq. yds.. Hence, the Possession Notice is incorrect and on the basis of possession Notice no further action could be taken by the Bank against the immovable property stated therein.

Other issues raised by the Applicant are kept open....."

3. It is the pleaded case of the petitioner that as per the mortgage deed dated 05-11-2014 executed by one Juturu Venkateshwara Ravi Prasad and also respondent Nos. 2 to 4 and five others, the total extent of 2,655 square yards in the aforementioned survey numbers was mortgaged and the said Juturu Venkateshwara Ravi Prasad and respondent Nos. 2 to 4 have derived title to the said property not only under the gift deed considered by respondent No. 1 but also under the two will deeds dated 25-01-2002, whereunder the properties forming part of 2,655 square yards were bequeathed in favour of respondent Nos. 2 to 4. In support of this plea, the petitioner has filed copies of the mortgage deed, the gift deed and the wills. Sri T.Bala Mohan Reddy, learned counsel for respondent Nos. 2 to 4, could not dispute the facts pleaded by the petitioner.

4. From a perusal of the mortgage deed executed by respondent Nos. 2 to 4 and five others, it is clearly evident that an extent of 2,655 square yards is mortgaged. It is seen from the impugned order that respondent No. 1 appeared to have got swayed away by the registered gift deed only and it has failed to consider the two registered will deeds, all of which together would cover the entire extent of 2,655 square yards. What appears to be unusual is that the approach of respondent No. 1 in deciding the issue of the actual extent of the mortgaged property once and for all while keeping the securitization appeal pending. If, for any reason, it has felt that the actual extent of the property, which was mortgaged, was only 1,327.50 square yards, it ought to have granted an *interim* order instead of rendering a conclusive finding pending the appeal. In any event, as far as the finding of respondent No. 1 that the mortgaged property is only 1,327.50 square yards is concerned, from the discussion undertaken

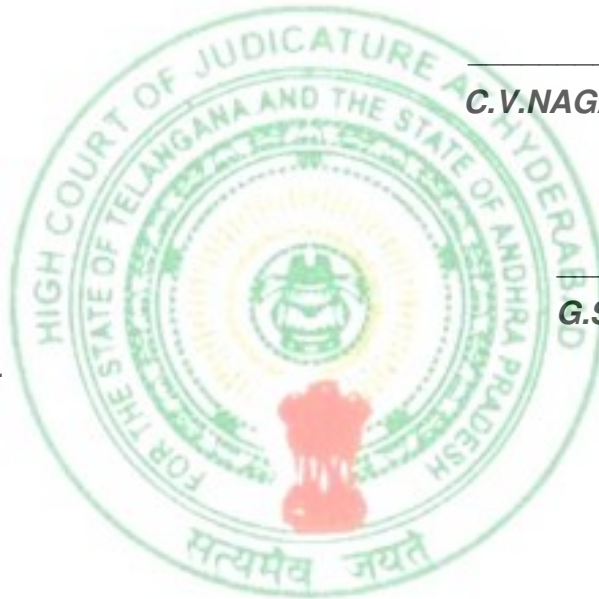
above, it is evident that the same is contrary to the record and consequently unsustainable.

5. For the aforementioned reasons, the impugned order is set aside. Respondent No. 1 is directed to make a comprehensive adjudication of the securitization appeal on all aspects after hearing both sides. The Writ Petition is, accordingly, allowed.

6. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 24565 of 2016 shall stand closed as infructuous.

Date: 29-09-2016.

JSK



C.V.NAGARJUNA REDDY, J.

G.SHYAM PRASAD, J.