

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.23223 of 2016

ORDER: (per SK,J)

This writ petition was filed assailing the action of the State Bank of India in initiating proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). The challenge was based on the ground that the bank had already secured a preliminary decree on 17.08.2015 in O.S.No.136 of 2014 on the file of the learned Additional Senior Civil Judge, Anakapalle, and was therefore not be at liberty to initiate proceedings under the SARFAESI Act.

Sri Maruthi Jadhav, learned counsel representing Sri B.S.Prasad, learned counsel for the State Bank of India, would however contend that the remedy provided to a secured creditor under the SARFAESI Act is an independent one and would not be foreclosed by recourse having been taken to the ordinary remedy of a civil suit. He would place reliance on the judgments of the Gujarat High Court in Ijee Injeetaa Limited v. Junagadh Vibhagiyaa Nagrik sahakari Bank Limited¹ and the Delhi High Court in Somnath Manocha v. Punjab and Singh Bank² in this regard.

Having perused the aforesaid case laws cited by the learned counsel for the respondent bank, we find ourselves in respectful agreement with the view taken by the Gujarat High Court and the Delhi High Court. The remedy provided to a secured creditor under the SARFAESI Act is an additional remedy which supplements the ordinary

¹ (2006) 129 CC 528 (Guj.)

² LPA No.942 of 2011 dated 20.04.2012

remedy of a civil suit. Therefore, merely because the bank had earlier filed a suit and secured a decree therein, it would not mean that it is precluded from enforcing its rights under the SARFAESI Act.

The writ petition is therefore bereft of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE GUDI SEVA SHYAM PRASAD

Date:06.07.2017

GJ

