

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION NO.22092 of 2016

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

‘For the reasons stated in the accompanying affidavit, this Hon’ble Court may be pleased to issue an order or direction more particularly one in the nature of writ of mandamus or any other appropriate writ declaring the action of the respondent no.1 in affixing possession notice, dated 22-6-2016 to the residential house of the petitioner bearing H.No.8-1-13/2/1 constructed in plot of land admeasuring 241.6 sq. yds., in sy.no.358 of Rampur locality of Karimnagar proper and Mandal, even though the petitioner has not taken any loan amount from the respondent no.2 bank, is nothing but arbitrary, illegal, null and void and violative of the principles of natural justice and also violative of Articles 14, 19 and 21 of the constitution of India. Consequently direct the respondents no.1 and 2 to take necessary action against the erring officials of the respondent no.2 who facilitated to grant loan in favour of the respondent no.3 on submitting a fictitious and created sale deed document no.5196 of 2014 considering the petitions submitted by the petitioner, dated 11-8-2015, 1-7-2016 and 27-6-2016 and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.’

By order dated 08.07.2016, this Court took note of the fact that the petitioner claimed that he had nothing to do with the third respondent herein, the borrower, or the loan availed by him from the Andhra Bank and that his property was not offered by him as security for such loan and granted an interim direction restraining the bank from interfering with his possession over the residential house bearing No.8-1-13/2/1 in Survey No.358, Rampur Locality, Karimnagar Mandal and District. This interim order was extended until further orders on 12.09.2016.

While so, Smt.V.Dyumani, learned counsel, entered appearance for the Andhra Bank and filed a counter-affidavit raising various contentious issues in relation to the rival title claimed by the petitioner and the third respondent over the same property.

In the light of the law laid down by this Court in D.Ram Reddy v. Asset Reconstruction Company (India) Pvt.Ltd.¹, in a matter of this nature, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ousting the jurisdiction of the civil Court would have no application. Reliance was

¹ 2016 Law Suit (Hyd) 315

placed in the said judgment upon certain observations made by the Supreme Court in *Mardia Chemicals Ltd. V. Union of India*² in this regard. The petitioner in that case was accordingly granted liberty to approach the competent civil Court for adjudication of the dispute.

For reasons alike as were stated in the aforesaid order and in terms thereof, this writ petition is disposed of granting liberty to the petitioner to take recourse to the civil remedies available to him before the competent civil Court in accordance with law. As the petitioner enjoyed the protection of the interim order granted by this Court all through the pendency of this writ petition, the same shall continue to operate till eight weeks from today. In the meanwhile, it would be open to the petitioner to seek appropriate interim relief from the competent civil Court. We make it clear that we have not ventured into the merits of the matter and all issues are left open for adjudication by the civil Court.

Before parting with the case, we must take note of the submission made by Smt.V.Dyumani, learned counsel, that the petitioner, taking advantage of the interim order granted by this Court, continued with the construction activity on the premises of the secured land and that he cannot claim any equities on the strength thereof. Sri K.Venumadhav, learned counsel for the petitioner, would however state that the construction has already been completed and that the petitioner is in possession of the residential house as on date. This aspect of the matter is also left open for consideration by the civil Court.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

J.UMA DEVI,J

Date:21.12.2017

GJ

² (2004) 4 SCC 311