

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

WRIT PETITION No.19968 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, it is hereby prayed that this Court may be pleased to issue a writ, order or direction, more particularly, one in the nature of Writ of Mandamus by declaring the action of the respondent no.1 in proceeding against the property of the petitioner i.e., Agricultural land of an extent of Ac.0-50 cents with an old tiled house bearing Door No.16-25-8/1, in TS No.1965/5/6, Sambamurthy Nagar, Near ESI Hospital, Kakinada, East Godavari District, for the auction of the same on 22-06-2016, without following the procedure as contemplated under SARFAESI Act, 2002 and Security Interest (Enforcement) Rules, 2002, as illegal, arbitrary, contrary to the provisions of Sections 31 (g), 13 of SARFAESI Act and Rules 8 & 9 of Security Interest (Enforcement) Rules, 2002, and in violation of the fundamental rights of the petitioner and Principles of Natural Justice, by consequently directing the respondent to proceed against the property of the petitioner strictly as contemplated under RDDBFI Act, 1993 and not under SARFAESI Act and Security Interest (Enforcement) Rules, 2002, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

By order dated 22.06.2016, this Court took note of the fact that the date of auction was fixed under the sale notice dated 21.05.2016 without reference to Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, and accordingly, granted interim stay of further proceedings pursuant to the said sale notice.

Sri A.Krishnam Raju, learned counsel for the State Bank of Hyderabad, the first respondent, fairly concedes that as there was a procedural violation in terms of the proposed sale and as there was an interim order passed by this Court, the sale proposed to be held on 22.06.2016 was not conducted.

In so far as the other issue raised by the petitioner is concerned, the memorandum for creation of mortgage by deposit of title deeds executed by the petitioner along with the letter of confirmation for creation of mortgage by deposit of title deeds signed by her does not indicate that the property mortgaged is an agricultural land. On the other hand, the letter of confirmation reads to the effect that it is a residential open plot bearing a door number and assessed to property tax under an assessment number.

That being so, in the light of the law laid down by a Division Bench of this Court in C.Malla Reddy v. Authorised Officer, IDBI Bank Limited, Hyderabad¹, when the deed of mortgage does not even indicate that the mortgaged property is an agricultural land, it is not open to the borrower to thereafter assert that it partakes the nature of agricultural land, thereby attracting the exemption provided under Section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The writ petition is therefore devoid of merit and is accordingly dismissed. All other issues are left open and it shall be open to the petitioner to avail appropriate remedies in accordance with law if and when a fresh cause of action arises.

Interim order dated 22.06.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE GUDI SEVA SHYAM PRASAD

Date:24.07.2017

GJ

¹ 2016 (4) ALD 687