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

WRIT PETITION No.32319 of 2017

ORDER: (per Justice Sanjay Kumar)

Mrs.Rohini Smitha, learned counsel for the petitioner, having argued for some time, sought an adjournment when Sri S.Dushyanth Reddy, learned counsel for the Axis Bank Limited, produced papers relating to S.A.No.828 of 2017 filed by the petitioner before the Debts Recovery Tribunal-II, Hyderabad.

We are however not inclined to grant an adjournment as we find that the petitioner has suppressed material facts and approached this Court with unclean hands, thereby disentitling her from claiming relief.

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

> "For the reasons stated in the affidavit filed here with, the petitioner humbly prays that this Hon'ble Court may be pleased to issue and Order, Direction, Writ more in the nature of Writ of Mandamus declaring the action of respondents Nos. 1 to 3 for taking possession of secured asset Flat No.101, in premises door No.8-3-169/32, 32/1, 32/3, 32/5 Sai Dattatreya Co-Operative Housing Society, Sri Sai Nilayam, Plot No. 32, Siddartha Nagar, Yusufguda, Vengal Rao Nagar, Hyderabad in invoking Sec.14 of Securitisation and Reconstruction of Financial Assets and Enforcement and Security Interest Act, 2002 invoking Sec 14 of the "Act" in filing an application before the learned Chief Metropolitan Magistrate, Nampalli, Hyderabad in Crl.M.P.No.682 of 2016 and pursuant to the orders the notice dt: 07-09-2017 issued by respondent No.4 directing the petitioner to vacate the secured asset premises within a period of (15) days without exhausting remedies available under Sec. 13(2) and Sec. 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

> and Rule (3) as bad, illegal, arbitrary, opposed to principles of natural justice, without an opportunity being given, violation of Art. 14 & Art. 21 of Constitution of India apart from the same being in contravention of mandatory requirements and procedure contemplated in the "Act" and Rules and to set aside the same consequently directing the respondents Nos.1 to 4 not to proceed further for taking possession of secured asset and be pleased to pass such other Order or Orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

Significantly, the petitioner approached the Tribunal by way of S.A.No.828 of 2017, wherein she not only assailed the demand notice issued by the bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') but also sought a declaration in relation to the measures taken by it under Section 13(4) thereof. This part of the prayer reads as under:

> "ii) Declare all the measures initiated by the first respondent bank under Section 13(4) of the Securitization Act including measures for taking physical possession of the schedule property pursuant to the notice dated 17.12.2016 issued by the Advocate Commissioner consequent to orders passed in Crl.M.P.No.682 of 2016 by the Hon'ble Chief Metropolitan Magistrate, Hyderabad under Section 14 of the Securitization Act as null and void."

Sri S.Dushyanth Reddy, learned counsel, produced before this Court a copy of the docket order dated 15.09.2017 passed by the Tribunal in the aforestated S.A. This order reads to the effect that the applicant therein, the petitioner before us, failed to pay the costs and as there was no representation on her behalf, the S.A. was dismissed for default.

The petitioner did not mention the fact of her having filed the aforestated S.A. in this writ petition which was filed on 18.09.2017. The petitioner is therefore found to be completely lacking in *bonafides*. In terms of the law laid down by this Court in K.D.Sharma v. SAIL[1], she is not entitled to have her matter adjudicated on merits having approached the Court with unclean hands.

On this short ground, the writ petition is dismissed.

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

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 08.12.2017
IBL

[1] (2008) 12 SCC 481