

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

WRIT PETITION No. 19826 of 2017

ORDER: (*per Hon'ble Sri Justice Sanjay Kumar*)

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

“Hon'ble Court may be pleased to issue an appropriate writ order or direction under Article 226 of the Constitution of India more particularly a writ in the nature of Mandamus declaring the action of the 2nd respondent-Authorized Officer in issuing notice dt. 20.1.2017 under Sec.13(2) of the SARFAESI Act and taking possession of the subject properties under Sec.13(4) of the Act by issuing further notice dt.23.3.2017 contrary to the civil court's decree in O.S.No.34/2008 on the file of the Senior Civil Judge, Sompeta filed by the 1st respondent-bank against the petitioner and others which was dismissed on 4.6.2014 holding, inter alia, that the suit claim was barred by limitation and therefore initiating the present proceedings under the SARFAESI Act as illegal, arbitrary and barred by limitation in view of Sec.36 of the SARFAESI Act and further direct the respondents to forbear from taking any further action under 'the SARFAESI Act' and pass such other order or orders as this Hon'ble court deems fit and proper in the circumstances the case.”

By order dated 22.06.2017, this Court granted interim stay of all further proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') taking note of the fact that the Andhra Pradesh Grameena Vikas Bank, the first respondent, had suffered an adverse judgment in O.S.No.34 of 2008 filed by it before the learned Senior Civil Judge, Sompeta, in relation to the very same loan account and was yet to get the finding that its claim in relation to the said loan was time barred set aside in A.S.No.466 of 2016 pending before this Court.

Sri Podila Hari Prasad, learned counsel for the first respondent Bank, would fairly state before us that an order to the said effect is yet to be secured by the Bank in A.S.No.446 of 2016.

As the Bank is not at liberty to proceed against the petitioner under the provisions of the Act of 2002 in respect of a loan hit by the law of limitation, we make it clear that it cannot proceed under the provisions of the Act of 2002 in relation to the petitioner's loan account as long as the finding of the learned Senior Civil Judge, Sompeta, in O.S.No.34 of 2008 to the effect that it is time barred is not set aside.

The writ petition is disposed of in terms of the aforestated direction. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

Date: 01.11.2017

va



JUSTICE SANJAY KUMAR

JUSTICE UMA DEVI