

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

WRIT PETITION No.4532 of 2015

ORDER: (Per Justice Sanjay Kumar)

This writ petition was filed assailing the order dated 17.10.2014 passed by the Debts Recovery Tribunal, Hyderabad, in S.A.I.R.No.660 of 2014.

The petitioner claims to be the owner of Flat No.10, Vinayaka Residency, Ward No.19, Kaikala Cheruvu, Tirupathi, Chittoor District. He is aggrieved by the fact that the Union Bank of India, having a secured interest over Flat No.11 in the third floor of the same building, is proceeding against his flat pursuant to the measures initiated by it against respondents 4 and 5 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

It appears that a possession notice was issued by the bank in relation to Flat No.11 but the same was affixed upon the petitioner's flat. Aggrieved by this action of the bank, he filed S.A.I.R.No.660 of 2014 before the Debts Recovery Tribunal, Hyderabad. By the order under challenge, the Tribunal opined that the question as to whether the secured creditor was proceeding against the secured asset or some other property could not be determined by it in an application filed under Section 17 of the SARFAESI Act. The petitioner was therefore given liberty to seek determination of his rights by filing a suit.

Though Sri P. Jagadish Chandra Prasad, learned counsel for the petitioner, would assert that the bank is uncertain as to the identity of Flat No.11 which is the secured asset offered by respondents 4 and 5 and that

separate proceedings under the SARFAESI Act were initiated against the petitioner in relation to Flat No.10 for the alleged default committed by him in repayment of the loan availed by him from the same bank, Sri Maruthi Jadhav, learned counsel representing Sri B.S. Prasad, learned counsel for the Union Bank of India, would state that a fraud was played on the bank and there appears to be some discrepancy with regard to the identity of Flat Nos.10 and 11 in the subject building.

In the light of the decision rendered by this Court in D. Ram Reddy v. Asset Reconstruction Co. (India) Pvt. Ltd., Mumbai¹, the proper and appropriate remedy for the petitioner would be to approach the jurisdictional civil court and Section 34 of the SARFAESI Act would have no role to play in such a situation. We therefore find no error in the order passed by the Debts Recovery Tribunal, Hyderabad, warranting interference in this writ petition.

The writ petition is accordingly dismissed.

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

No order as to costs.

SANJAY KUMAR, J

GUDI SEVA SHYAM PRASAD, J

7th July, 2017
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¹ 2017 (1) ALD 170