IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/1/2018

C O R A M

The Honourable Mr.Justice S.Manikumar

a n d

The Honourable Mrs.Justice V.Bhavani Subbaroyan

Writ Petition No.34309 of 2017
a n d
W.M.P.Nos.38179 and 38180 of 2017

P. Naveen Chakravarthy ... Petitioner

Vs

1. Andhra Bank, Chetpet Branch,
rep. by its Branch Manager & Authorised officer
55/61, Mc Nichols Road
6 Gound Floor Buckingham Terrace
Chetpet
Chennai 600 030.

2. Andhra Bank
Zonal Office
rep. by its Dy.General Manager & Authorised Officer
168 Lingi Chetty Street
Chennai 600 001.

3. Encore Asset Reconstruction Company Private Limited (EARC)
rep. by its Managing Director
5th Floor, Plot No.137
Sector 44, Gurugram
Haryana 122 002. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the impugned order dated 27/9/2017, as notified in the letter of the first respondent bearing No.0784/45/616, issued by the first respondent and quash the same.

For petitioner ... Mr.B.Mohan

O R D E R

(Order of the Court was made by S.Manikumar,J)

P. Naveen Chakravarthy, one of the guarantors, to the loan availed by Ambika Conductors Private Limited, Tamil Nadu, has challenged the letter, dated 27/9/2017, of Andhra Bank, Chennai, by which, the said Bank has assigned the financial assets, to Encore Asset Reconstruction Company Private Limited (EARC), Haryana, under SARFAESI Act, 2002.

2. In the prayer, the petitioner has captioned the said letter, dated 27/9/2017, as an order.

3. Material on record discloses that Ambika Conductors Private Limited, a Company, run by the petitioner's father, availed credit facilities, from Andhra Bank, Chennai, respondent No.1, vide sanction letter, dated 31/3/2015, to the tune of Rs.200 lakhs, apart from the issuance of Security deposit-cum-Performance Bank guarantee, to the tune of Rs.31 lakhs, as against the loan application, for credit facilities, to the tune of Rs.1400 lakhs, submitted by the Company.

4. Petitioner has contended that at the time of applying for the said loan, his father offered 47.61 acres of agricultural lands, belonging to the petitioner, in Perviyavepathur Village, within the Sub-Registration District of Ponneri, Tiruvallur District, as third party collateral security.

5. On 31/5/2016, by a common notice issued by the Bank, petitioner has been informed that there was an outstanding tune of Rs.220 lakhs, to the Bank. Ambika Conductors Private Limited, sent a reply, dated 14/7/2016. Thereafter, possession notice, dated 4/11/2016, has been issued by the Bank, under Section 13 (4) of the SARFAESI Act, 2002. Sale notice, dated 2/3/2007, was also issued, fixing the auction, on 6/4/2017. There were no bidders.

6. Vide letter, dated 20/7/2017, Ambika Conductors Private Limited, offered OTS proposal, to Andhra Bank, Chennai/first respondent, for Rs.2.21 crores and thereafter, the offer was enhanced to Rs.2.30 crores. According to the petitioner, OTS proposals are still pending consideration with the Bank.

7. When the matter stood thus, petitioner received another notice, dated 27/9/2017, informing that loan account has been assigned to Asset Reconstruction Company Private Limited/third respondent. Andhra Bank, Chennai/first respondent has informed the petitioner, to deal with the third respondent, pertaining to

the loan account. A letter, dated 5/10/2017, has been sent by Encore Asset Reconstruction Company Private Limited, to the petitioner. Challenging the letter, dated 27/9/2017, captioned as an order, instant writ petition has been filed.

8. Inviting the attention of this Court to Section 31 (i) of the SARFAESI Act, 2002, Mr.B.Mohan, learned counsel for the petitioner submitted that when the provisions of the said Act, are not applicable to any security interest created in the agricultural land, assignment is not valid and therefore, letter, dated 27/9/2017, has to be set aside.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. Section 2 B of Securitisation Act, 2002, defines what Asset Reconstruction means. For brevity, the same is extracted:-

> "Asset reconstruction company" means acquisition by any (asset reconstruction company) of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance."

11. Section 2(ba) reads thus:-

> "Asset Reconstruction Company" means a company registered with Reserve Bank under Section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both."

12. Section 5 of the SARFAESI Act, 2002, deals with "Acquisition of rights or interest in financial assets" and the same is extracted hereunder:-

> "Notwithstanding anything contained in any agreement or any other law for the time being in force, any [asset reconstruction company] may acquire financial assets of any bank or financial institution -
>
> (a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
>
> (b). by entering into an agreement with

such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(1-A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8 - F of the Indian Stamp Act, 1899 (2 of 1899).

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

(2). If the Bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the [asset reconstruction company], such [asset reconstruction company] shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(2-A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).

(3). Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of asset reconstruction company, as the case may be.

(4). If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 186), the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

5. On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any Court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or Court or Authority shall pass orders for the substitution of the reconstruction company in such pending suit, appeal or other proceedings."

13. As per Section 31 (i) of SARFAESI Act, 2002, provisions of this Court shall not apply to any security interest created in agricultural land. Though the petitioner

has contended that the security interest created is, in respect of agricultural property, stated to have been mortgaged, as a third party collateral security, from the averments, it could be deduced that when possession notice, dated 4/11/2016, was issued, under Section 13(4) of the SARFAESI Act, 2002, followed by the sale notice, dated 2/3/2017, petitioner had not questioned the same, before the appropriate forum, under Section 17 of the SARFAESI Act, 2002.

14. Under Section 5 of the SARFAESI Act, 2002, Bank is empowered to assign loan to Encore Asset Reconstruction Company Private Limited/third respondent, which is an Asset Reconstruction Company, in terms of Section 2 (b-a) of SARFAESI Act, 2002. On assignment, respondent No.3, has sent a letter, dated 5/10/2017, borrower and the guarantors, advising them to address the Asset Reconstruction Company, pertaining to the financial assistance. Though Mr.B. Mohan, learned counsel for the petitioner contended that in as much as the properties offered as collateral security are agricultural properties, and therefore, no action under the SARFAESI Act, 2002, can be taken and in such circumstances, even the assignment is bad in law, we are not inclined to accept the said contentions. Section 5 of the SARFAESI Act, 2002 empowers the Bank to enter into an agreement with the financial institution, for transfer of financial assistance and loan. There is no error in assigning the loan. The assignor Andhra Bank, Chennai, has sent an intimation, dated 27/9/2017, to the borrower and the guarantors, as stated supra, and so also, the assignee has sent a communication, dated 5/10/2017, to the borrower, as well as the guarantors that payments with respect to the financial assistance should be made to the third respondent, directly. Borrower and guarantors have been advised to communicate with the Asset Reconstruction Company. There is no merit in challenging the communication, dated 27/9/2017.

15. Accordingly, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

mvs.

To

1. The Branch Manager & Authorised officer
Andhra Bank
55/61, Mc Nichols Road
6 Ground Floor Buckingham Terrace
Chetpet
Chennai 600 030.

2. The Dy.General Manager & Authorised Officer
Andhra Bank
Zonal Office
168 Lingi Chetty Street
Chennai 600 001.

3. The Managing Director
Encore Asset Reconstruction Company Private Limited
(EARC)
5th Floor, Plot No.137
Sector 44, Gurugram
Haryana 122 002.

+1cc to Mr.B.Mohan, Advocate SR.No.461

Writ Petition No.34309 of 2017

GMR(CO)
GN(31/01/2018)