IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34573 of 2014
and
M.P.No.1 of 2014

1. V.Dhanabal
2. V.Dhanuskodi ... Petitioners

vs.

1. State Bank of India,
Rep. by its Chief Manager,
Stressed Assets Management Branch,
Red Cross Society Buildings,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

2. The Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Society Buildings,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

3. Asset Reconstruction Company (India) Ltd.,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400 028.

4. M/s.Shri Shanjeevi Agencies,
Rep. by its Proprietor L.Sanjeevi,
9/5, Ammankulam Road,
Pappanaickenpalayam,
Coimbatore - 641 037. ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring the Assignment made by the First Respondent in favour of the third respondent under Section 5 of the SARFAESI Act in so far as the petitioners property is concerned as null and void and unconstitutional and contrary to Section 31 of the SARFAESI Act.

For Petitioners: Mr.K.J.Parthasarathy

For Respondents: No appearance (for R1, R2 & R4)
Mr.K.Balamurali
for Mr.K.Shivakumar & Suresh(for R3)

ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ petition is filed for a writ of declaration, declaring the Assignment made by the State Bank of India, Chennai, first respondent herein, in favour of the Asset Reconstruction Company (India) Ltd., Mumbai, third respondent herein, under Section 5 of the SARFAESI Act, in so far as the petitioner's property is concerned, as null and void and unconstitutional and contrary to Section 31 of the SARFAESI Act.

2. Petitioners stood as the guarantors for the loan borrowed by M/s.Shri Shanjeevi Agencies, Coimbatore, the 4th respondent herein, from the 1st respondent bank and they have offered their agricultural land as collateral security. Fourth respondent has defaulted in payment and thus, the 1st respondent bank has assigned the financial assets, to the 3rd respondent viz. Asset Reconstruction Company (India) Limited, Mumbai. The petitioners have filed the instant writ petition for the abovesaid relief.

3. Heard the learned counsel for the parties and perused the materials available on record.

4. On the aspect as to whether assignment could be challenged, after considering the provisions of the SARFAESI Act, 2002, this Court in W.P.No.34309 of 2017, in the matter of P.Naveen Chakravarthy Vs. Andhra Bank, rep. by its Branch Manager & Authorised Officer, Chennai & Others, at paragraph No.9, held as follows:

> "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.

5. Contentions in support of the instant writ petition, are similar. Hence, following the abovesaid decision, writ petition is dismissed. No Costs. However, it is open to the petitioner to take steps for redemption of the property, if so advised. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Manager,
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The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400 028.

+1cc to Mr.K.J.Parthasarathy, Advocate sr.no.31658
+1cc to Mr.K.Shivakumar & Suresh, Advocate sr.no.31905

W.P.No.34573 of 2014
and
M.P.No.1 of 2014

vd(co)
nr 11/06/2018