THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos. 1749, 1760, 1766, 1769, 1770, 1771, 1773, 1774, 1777 of 2017 and 114, 115, 116, 117, 118, 123, 124, 125 and 126 of 2018

Common Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Both Sri D.V. Sitarama Murthy, learned Senior Counsel, and Sri P. Giri Krishna, learned counsel for the appellants, would submit that, since the appellants are also the joint owners of the subject property which belonged to late Mohd. Baquer Khan, the order of the learned Single Judge adversely affects their interests, and causes substantial prejudice to them; and they are, therefore, entitled to challenge the validity of the order under appeal, on its merits, in the present proceedings under Clause 15 of the Letters Patent.

The appellants are the mother and son of Sri Mohd. Abdullah Khan who was a party to the arbitration awards dated 30.03.2002 passed under Section 61 of the A.P. Cooperative Societies Act, 1964 (hereinafter referred to as "the Act"). Neither of the appellants herein were parties to the said arbitration awards, which were subjected to challenge before the Cooperative Tribunal. Initially the Tribunal, by its order in CTA Nos. 86, 87 and 88 of 2002, dismissed the appeals for non-prosecution. These three appeals were preferred by Sri Mohd. Abdullah Khan, who mortgaged the subject property belonging to his father Mohd. Baquer Khan on the basis of a General Power of Attorney given in his favour by his father, and on his failure to repay the debt due to the respondent bank, proceedings were initiated against him under the Act, resulting in three awards being passed under Section 61 thereof. On these appeals being dismissed by the Tribunal for non-

prosecution, the respondent-bank initiated proceedings to auction the subject property. The auction purchaser paid Rs.2.25 crores and a Sale Certificate was issued in his favour. Thereafter Sri Mohd. Abdullah Khan filed an application to condone the delay of 1000 days in filing the petition to set aside the order passed earlier by the Cooperative Tribunal dismissing the appeals for non-prosecution. He also filed C.T.A. Nos. 89, 90 and 91 of 2006 to set aside the Sale Certificate issued by the bank in favour of the Auction purchaser. The three appeals i.e., CTA Nos.86, 87 and 88 of 2002, which were preferred against the three awards, and the three appeals in C.T.A. Nos.89, 90 and 91 of 2006 preferred against the action of the respondent-bank in putting the subject property to auction, were heard together; and three separate orders came to be passed on 09.03.2007 allowing the appeals, and the awards passed under Section 61 of the Act were set aside.

Aggrieved thereby, the respondent-bank preferred six Writ Petitions, and the auction purchaser filed three Writ Petitions. All these nine Writ Petitions came to be disposed of by the common order passed in W.P. No.8910 of 2007 and batch dated 22.09.2017; and on Writ Appeals being filed, against the aforesaid order passed by the learned Single Judge, an interim order was passed in W.A.M.P. No. 3204 of 2017 in W.A. No. 1680 of 2017 and batch dated 22.11.2017 directing the auction purchaser, in W.P. No. 12014 of 2007 and batch, not to alienate the subject property or create any third party rights thereupon or, in any way, change the nature of the property, pending further orders.

The mother and the son of Sri Mohd. Abdullah Khan, (i.e., the 1st respondent in W.P. No. 12014 of 2007 and batch), have now

preferred the present Writ Appeals against the order passed by the learned Single Judge in W.P. No.8910 of 2007 and batch dated 22.09.2017. Neither were they parties to the award passed under Section 61 of the Act, nor in the Writ proceedings before the learned Single Judge. They claim to be aggrieved by the awards passed under Section 61 of the Act and contend that, since they are the joint owners of the subject property, the awards could not have been passed without arraying them as parties to the proceedings instituted under the Act. As the appellants herein are neither parties to the award nor to any of the subsequent proceedings, their grievance, regarding the validity of the awards passed under Section 61 of the Act, can only be agitated in independent legal proceedings wherein the validity of the awards are subjected to challenge. As the awards were only passed against Sri Mohd. Abdullah Khan, it is he who can claim to be aggrieved thereby and has, in fact, questioned its validity before the Cooperative Tribunal and is a party to the Writ petitions which resulted in the order under appeal being passed by the learned Single Judge. It is evident that the appellants are neither necessary nor proper parties to the proceedings instituted pursuant to the awards passed under Section 61 of the Act, and are not entitled to question the order of the Learned Single Judge, in W.P. No. 12014 of 2007 and batch dated 22.09.2017, in proceedings under Clause 15 of the Letters Patent.

Leaving it open to the appellants herein to question the award passed under Section 61 of the Act if they are aggrieved thereby, in appropriate legal proceedings, we see no reason to entertain these appeals at their behest, against the order passed by the learned Single Judge in W.P. No.12014 of 2007 and batch dated 22.09.2017, whereby

the orders passed by the Cooperative Tribunal were set aside. In the light of the orders under appeal, passed by the Learned Single Judge, the awards passed against Sri Mohd. Abdullah Khan (the respondent in W.P. No.12014 of 2007 and batch), stand revived and, consequently, the action of the bank, in putting the mortgaged properties to sale, must be held to be valid subject to the result of W.A. No.1680 of 2017 and batch..

Subject to the aforesaid observations, the Writ Appeals fail, and are, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

15th March, 2018

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HIGH COURT OF JUDICATURE AT HYDERABAD
THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते

Writ Appeal Nos. 1749, 1760, 1766, 1769, 1770, 1771, 1773, 1774, 1777 of 2017 and 114, 115, 116, 117, 118, 123, 124, 125 and 126 of 2018

Date:15.3.2018

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