HON’BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON’BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.3719 of 2018

Date: 28.06.2018

Between :

Machilipatnam Cooperative Urban Bank Limited

… Petitioner

And

Permanent Lok Adalat for Public Utility Services,
Krishna District at Machilipatnam,
Rep. by its Chairman and others.

… Respondents

COUNSEL FOR PETITIONER : Sri N. Jayasurya

COUNSEL FOR RESPONDENTS : Sri J. Anil Kumar, SC for R1

None appeared for R3 to R5

THE COURT MADE THE FOLLOWING:

ORDER : (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This writ petition is filed by the petitioner – Bank for issue of Certiorari to quash the Award dated 08.01.2018 in PLA.No.2 of 2017 on the file of respondent No.1, as illegal and arbitrary.

Though notices have been received by respondent Nos.3 to 5, none entered appearance on their behalf. We have heard Sri N. Jayasurya, learned Standing Counsel for the petitioner – Bank and Sri J. Anil Kumar, learned Standing Counsel for A.P. State Legal Services Authority appearing for respondent No.1.

At the outset, it needs to be noted that Sri N. Jayasurya, learned Standing Counsel for the petitioner – Bank has fairly conceded that as regards the jurisdiction of respondent No.1 – Lok Adalat, a separate Notification was issued including the Cooperative Urban Banks in the category of Public Utility Services and that, therefore, he is not pressing the aspect relating to the jurisdiction of respondent No.1 to entertain the PLA.No.2 of 2017.

As regards the merits of the case, it is not in dispute that one late Y. Bhaskara Rao (hereinafter referred to as 'the deceased') has availed four loans from the petitioner – Bank. He also stood as surety for the loan of Rs.30,000/- availed by one Mr. Dalai China Narasimha Rao. After the death of the deceased, his widow and children, who are arrayed as respondent Nos.2 to 5 herein, discharged all the four loans. In respect of the loan for which the deceased stood as surety, recovery proceedings were initiated by the petitioner – Bank in which the competent authority has passed an Award against the principal borrower as well as the deceased, being the surety. As the petitioner – Bank refused to release the original documents of title deposited by the deceased for obtaining the four loans, respondent Nos.2 to 5 have approached respondent No.1 by filing PLA.No.2 of 2017.

On receipt of notice from respondent No.1, the petitioner – Bank has filed its reply wherein it has stated that as the deceased stood as mortgage surety for the loan obtained by Mr. Dalai China Narasimha Rao, the petitioner – Bank is entitled to enforce the mortgage surety in respect of the properties covered by the documents of title deposited by the deceased in connection with the four loans obtained by him. Respondent No.1, however, rejected the said plea *inter alia* observing that the petitioner – Bank has not filed any documents with regard to E.P.No.244/2005-2006 and Arbitration Claim No.161/2003-2004 to show that the deceased stood as mortgage surety to the loan obtained by Mr. Dalai China Narasimha Rao and that it has not stated the reason why they could not file those documents. Respondent No.1 has also observed that it is not the pleaded case of the petitioner – Bank that the deceased executed Mortgage Deed or Memorandum of Deposit of Title Deeds with regard to the loan for which he stood as surety. It has further observed that Ex.B.2 loan application shows that the amount has to be recovered from the borrower and surety from out of their salaries and that if really the deceased stood as mortgage surety, there would not have been any mention about recovery of the amount from the salary of surety.

Having carefully considered the reasons assigned by respondent No.1 in the impugned Award dated 08.01.2018, we are entirely in agreement with the same. When the petitioner – Bank has pleaded mortgage by the deceased, initial burden lies on it to prove such mortgage. Admittedly, the petitioner – Bank has not filed any documents, even before respondent No.1 or atleast before this Court, to show that the deceased has executed any Mortgage Deed or Memorandum of Deposit of Title Deeds. In the absence of these documents, it's plea that the properties of the deceased were mortgaged is wholly without merit and the same was rightly rejected by respondent No.1.

Having regard to the above reasons, we do not find any merit in this writ petition and the same is accordingly dismissed. This order, however, will not preclude the petitioner – Bank from enforcing the surety of the deceased in accordance with law.

Subject to the above observations, the writ petition is dismissed. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

28.06.2018.
Msr

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