

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

W.P.No.5820 of 2018

Date: 14.09.2018

Between:

M/s.Nellore Finance Corporation,
Nellore, rep. by its Managing Partner,
J.V. Reddy, S/o.Balaramireddy
Aged 84 years, Occ: Business,
R/o.Nellore, Nellore district.

... Petitioner

And

The State of Andhra Pradesh,
rep. by its Secretary,
Law & Legislation Department,
Secretariat, Velagapudi, Amaravathi,
Guntur district, Andhra Pradesh
and three others.

... Respondents

Counsel for the Petitioner : Mr. Y.Venkat Satyam

Counsel for the Respondents : A.G.P. for Law&Legislative
Affairs for R1
Mr.J.Anil Kumar for R2
A.G.P. for Assignment for R3
Mr.V.Sudhakar Reddy for R4

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed assailing the Award dated 24.10.2009 in E.P.No.65 of 1995 in O.S.No.23 of 1989 and also order dated 19.01.2012 on the file of the Senior Civil Judge, Kavali.

2. We have heard Mr.Y.Venkatasatyam, learned counsel for the petitioner, Mr.J.Anil Kumar, learned Standing Counsel for A.P. Legal Services Authority for respondent No.2 and Mr.V.Sudhakar Reddy, learned counsel for respondent No.4.

3. The petitioner has filed O.S.No.23 of 1989 in the Court of the Subordinate Judge at Kavali, for recovery of a sum of Rs.5 lakhs, being the balance of principal and interest due on a promissory note dated 25.02.1987 executed by respondent No.4 and another person by name S.Gangadaramma, in favour of the petitioner. Apart from the promissory note, the claim of the petitioner is based on a mortgage deed executed by respondent No.4 and the aforementioned other borrower. The material filed in the writ petition does not disclose whether a final decree was passed and if so, when.

4. Be that as it may, in E.P.No.65 of 1995 filed by the petitioner, a settlement was reached as per which, the decree holder agreed to pay a sum of Rs.13 lakhs to respondent No.4 and in turn, the latter agreed to execute a registered sale deed and deliver the possession of

the E.P. schedule property to the petitioner. In pursuance of the said settlement, the petitioner has paid Rs.2 lakhs to respondent No.4 and it agreed to pay the remaining amount of Rs.11 lakhs within three months and on receipt of the said amount, respondent No.4 has agreed to execute a registered sale deed and deliver the possession of E.P. schedule property. The parties further agreed that in case of default by the judgment debtor, the petitioner may get the property registered in his name or in the name of its nominee by paying balance of Rs.11 lakhs through court and obtain registered sale deed and possession of E.P. schedule property.

5. In pursuance of the said settlement, the Lok Adalat Bench, Kavali, passed its award dated 24.10.2009. Contrary to the settlement reached between the parties, the petitioner failed to pay the balance amount within the agreed time. The petitioner has filed the E.P. in the year 2011, seeking execution of the Lok Adalat Award by pleading that due to circumstances beyond its control, it could not pay the balance amount of Rs.11 lakhs within time, that in all, it has paid Rs.6 lakhs to respondent No.4 and that it is willing to pay the balance amount. The execution court however dismissed the said E.P. by order dated 19.01.2012, holding that the petitioner failed to comply with the condition of settlement, based on which the Lok Adalat passed the award, namely, payment of balance amount of Rs.11 lakhs on or before 24.01.2010, and also declined to accept the

explanation offered by the petitioner that as respondent No.4 failed to get the income tax clearance certificate, the balance amount of Rs.5 lakhs could not be paid to him by the petitioner, by observing that no such obligation was cast on respondent No.4 in the settlement.

6. On a careful consideration of the facts of the case as discussed above, we are of the opinion that neither the Lok Adalat award nor the order dated 19.01.2012 of the learned Senior Civil Judge, Kavali, dismissing the E.P. filed by the petitioner, suffers from any illegalities warranting this court's interference under Article 226 of the Constitution of India. Admittedly, the petitioner failed to comply with the term of settlement, namely, payment of balance of a sum of Rs.11 lakhs on or before 24.01.2010. By the time the petitioner filed the E.P. in the year 2011, still a sum of Rs.5 lakhs was due and payable by it to respondent No.4. The execution court has rightly rejected the plea of the petitioner that as respondent No.4 failed to obtain the income tax clearance, he could not pay the balance amount, as no such condition was stipulated under the terms of settlement or by the Lok Adalat Award.

7. In the light of the above discussion, we do not find any merit in the writ petition and the same is, accordingly, dismissed.

8. As a sequel to the dismissal of the writ petition, I.A.No.1 of 2018 stands dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 14th September, 2018

msb



