

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.4450 of 2018

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

'For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of mandamus and to raise the attachment order affected by the advocate commissioner on dt. 06/02/2018 in compliance of the notice dated 29/01/2018 over the scheduled property that is H.No.4-39, (Old no.3-142 and 3-1A) consisting of 450 square Feet, built up area of RCC roof on plot no.43 admeasuring 168.77 square Yards or 141 square Meters, under Sy.No.909 situated at Maruthi Nagar, Malkajgiri (V) within the Limits of GHMC, RR district and pass such order or orders as deems fit and proper in the interest of justice.'

As the petitioner claimed title in relation to the property over which the respondent bank asserted a security interest pursuant to the registered sale deed executed in her favour in the year 2011 and her vendor, in turn, was stated to have secured title as long back as in the year 2003, this Court granted interim suspension of the attachment order dated 06.02.2018 executed by the Advocate Commissioner pursuant to the order passed by the learned Chief Metropolitan Magistrate, Cyberabad, Ranga Reddy District, in CrI.M.P.No.1181 of 2017, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act').

The respondent bank entered appearance through Sri Srinivas Chitturu, learned counsel, and filed a counter. Therein, the bank pointed out that the petitioner filed SAIR No.374 of 2014 before the Debts

Recovery Tribunal, Hyderabad, under Section 17 of the SARFAESI Act challenging the recovery proceedings initiated by it and the said application was rejected at the stage of consideration of the condone delay petition on 22.12.2014. The bank further stated that the petitioner filed O.S.No.29 of 2015 before the learned XVI Additional District Judge, Ranga Reddy District at Miyapur, against it and the said suit was dismissed for default on 24.06.2016.

Significantly, neither of these facts was divulged by the petitioner in her writ affidavit. Suppression of such facts which have a bearing on this case would amount to abuse of process.

In K.D.SHARMA V/s. STEEL AUTHORITY OF INDIA¹, the Supreme Court pointed out that if there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, such a petition may be dismissed at the threshold without considering the merits of the claim. Reference was made in this regard to the observations of Scrutton, L.J. in R. V/s. KENSINGTON INCOME TAX COMMRS.², in the following words:

‘...it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.’

¹ (2008) 12 SCC 481

² (1917) 1 KB 486

As the petitioner wilfully withheld relevant facts while filing this writ petition, we are of the opinion that she must be non-suited for abuse of process of this Court.

The writ petition is accordingly dismissed on this short ground. We make it clear that there was no direction enabling the petitioner to take over the possession of the secured asset which seems to have been delivered to the bank pursuant to the order of the learned Chief Metropolitan Magistrate.

Interim order dated 12.02.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:16.07.2018

GJ