

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NOS.5541 AND 5542 OF 2018

Between:

M.Savithri and another

... Petitioners

and

State Bank of India, Stressed Assets
Management Branch, Hyderabad and others

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 23rd MARCH, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

P.KESHAVA RAO, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO
+ WRIT PETITION NOS.5541 AND 5542 OF 2018**

% DATED 23rd MARCH, 2018

M.Savithri and another ... Petitioners

Vs.

\$ State Bank of India, Stressed Assets
Management Branch, Hyderabad and others ... Respondents

<Gist:

>Head Note:

! Counsel for petitioners : Sri R.Raghunandan and
Sri T.Bala Mohan Reddy

^Counsel for respondent 1 : Sri Ambadipudi
Satyanarayana

^Counsel for respondents 2 to 5 : --

? CASES REFERRED:



**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO**
WRIT PETITION NOS.5541 AND 5542 OF 2018

C O M M O N O R D E R
(Per Hon'ble Sri Justice Sanjay Kumar)

M.Savithri and her daughter, M.Anuradha, the petitioners in these cases, are the applicants in S.A.No.301 of 2017 (old S.A.No.182 of 2016) on the file of the Debts Recovery Tribunal-II, Hyderabad (*hereinafter*, 'the Tribunal'). Presently, they are aggrieved by the orders dated 03.01.2018 and 02.02.2018 passed in the said S.A. The order dated 03.01.2018 was passed by the Tribunal dismissing I.A.No.3239 of 2017 filed therein by the petitioners to summon from the State Bank of India (*hereinafter*, 'the bank'), the General Power of Attorney dated 31.03.2011 executed by M.Aswani Kumar in favour of one M.S.K.Prasad. W.P.No.5542 of 2018 relates to the challenge laid by the petitioners to this order. The order dated 02.02.2018 was passed by the Tribunal on the Memo dated 13.01.2018 filed by the petitioners; disallowing their plea that a direction should be given to the bank to furnish them a copy of the sale certificate dated 08.12.2017. W.P.No.5541 of 2018 arises out of this order.

Heard Sri R.Raghunandan, learned senior counsel representing Sri T.Bala Mohan Reddy, learned counsel for the petitioners, and Sri Ambadipudi Satyanarayana, learned counsel for the bank.

S.A.No.301 of 2017 (old S.A.No.182 of 2016) was filed by the petitioners under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), for multiple reliefs, *viz.*, (i) to declare the 'Notice Prior to Sale' dated 26.04.2016 issued by the bank as

illegal; (ii) to declare the 'Possession Notice' dated 19.03.2016 issued by the bank as illegal; (iii) to declare that initiation of measures, including issuance of Demand Notice, under the SARFAESI Act by the bank as illegal; (iv) to set aside all the measures initiated by the bank under Sections 13(2) and 13(4) of the SARFAESI Act; (iv)(a) to declare the E-Auction Sale Notice dated 06.08.2016 fixing the date of auction of the secured asset as 15.09.2016 as illegal (This relief was added as per the order dated 24.05.2017 passed by the Tribunal in I.A.No.2281 of 2017 in S.A.No.301 of 2017); (iv)(b) to declare the auction of the secured asset by the bank on 15.09.2016 pursuant to the Auction Sale Notice dated 06.08.2016 as null and void; (iv)(c) to set aside the confirmation of sale of the secured asset by the bank in favour of the auction purchasers; (iv)(d) to declare that the auction proceedings conducted by the bank as against the secured asset were not in accordance with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002; (iv)(e) to direct the bank to forfeit the amount deposited towards the initial 25% of the bid amount by the auction purchasers and to adjust the same against the petitioners' account in view of non-compliance with Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 (Reliefs (iv)(b) to (iv)(e) were added as per the order dated 09.05.2017 of the Tribunal in I.A.No.898 of 2017 in S.A.No.301 of 2017); (v) to direct the bank to pay costs including compensatory costs and damages to the extent of Rs.50,00,000/-; and (vi) pass such other order(s) as the Tribunal deems fit and proper in the circumstances of the case.

Facts, to the extent relevant, may be summarized thus: The petitioners stood as guarantors for the loan availed by M/s. Suncorp Life Styles Limited, Hyderabad, the second respondent, from the

bank. Demand Notice dated 13.02.2015 was issued by the bank under Section 13(2) of the SARFAESI Act after default was committed in repayment of the said loan. The sum of Rs.96,71,64,135/- was shown as the amount due and payable as on 11.02.2015 along with interest thereon. Further measures were initiated by the bank under Section 13(4) of the SARFAESI Act culminating in the auction sale of the secured asset belonging to the petitioners on 15.09.2016. Aggrieved thereby, they preferred the subject securitization application before the Tribunal praying for various reliefs, as aforestated.

By order dated 28.09.2016, while refusing to stay all further proceedings pursuant to the auction sale held on 15.09.2016, the Tribunal allowed the bank to receive the sale consideration but interdicted it from issuing a sale certificate or disturbing the possession of the petitioners over the secured asset until further orders. However, by the later order dated 05.12.2017, the Tribunal allowed the bank to issue a sale certificate also to the auction purchasers, subject to the outcome of the securitization application. Aggrieved by this order, the petitioners filed W.P.No.42417 of 2017 before this Court. By order dated 14.12.2017 passed therein, this Court made it clear that registration of the sale certificate would also be subject to the outcome of the securitization application and disposed of the writ petition, directing the Tribunal to endeavour to dispose of the securitization application on merits expeditiously. Two other writ petitions preceded W.P.No.42417 of 2017, but their details and relevance can be gone into hereinafter.

At this stage, the petitioners filed I.A.No.3239 of 2017 in the pending S.A. to summon the General Power of Attorney dated

31.03.2011. This document was executed by M.Aswani Kumar, the son of the first petitioner and the brother of the second petitioner respectively, in favour of M.S.K.Prasad. It was pursuant to this document that M.S.K.Prasad deposited the title deeds with the bank.

The case of the petitioners was that this General Power of Attorney did not bestow the power upon M.S.K.Prasad to create security interest over the property. However, by order dated 03.01.2018, the Tribunal noted that the petitioners, along with M.Aswani Kumar and M.S.K.Prasad, had mortgaged the subject secured asset with the bank and two other banks as security for the loans availed by the second respondent company. The Tribunal further found that despite the bank issuing notices to M.Aswani Kumar and M.S.K. Prasad along with the petitioners, the petitioners alone filed the securitization application questioning the measures initiated by the bank. M.Aswani Kumar and M.S.K.Prasad were not even parties to the S.A. and did not choose to independently challenge the measures taken by the bank against the subject secured asset. The Tribunal therefore opined that when M.Aswani Kumar himself did not raise any issue with regard to the General Power of Attorney dated 31.03.2011, it was not open to the petitioners to do so by summoning the said document. The Tribunal also noted that the petitioners and the bank had already advanced their arguments in the main case on 29.07.2017 itself and were thereafter resorting to filing of one petition or the other so as to stall the progress of the S.A. Referring to the directions of this Court in W.P.Nos.38857 and 42417 of 2017 to dispose of the S.A. expeditiously, the Tribunal held that the petitioners failed to make

out a valid ground for summoning the document and accordingly dismissed the I.A.

Thereafter, on 13.01.2018, the petitioners filed a Memo seeking a direction to the bank to furnish the sale certificate issued by it to the auction purchasers. By order dated 02.02.2018, the Tribunal noted that the Memo was silent as to the purpose for which the said sale certificate was required. Pointing out that the petitioners could approach the bank for a copy of the sale certificate under the Right to Information Act, 2005, the Tribunal held that in the light of the directions of this Court to dispose of the S.A. expeditiously, no order could be given requiring the bank to furnish a copy of the said sale certificate. The Memo was accordingly rejected.

In the backdrop of this factual matrix, Sri R.Raghunandan, learned senior counsel, would submit that the petitioners are entitled to ventilate all their grievances in the securitization application and it was for achieving a comprehensive adjudication therein that they asked for production of the documents as aforestated but the Tribunal brushed aside their plea. Learned senior counsel would submit that no prejudice would be caused if the bank produces these documents and that the Tribunal was in error in holding that the petitioners were trying to stall or drag on the proceedings.

Sri Ambadipudi Satyanarayana, learned counsel, on the other hand, would produce copies of the orders passed by this Court in the earlier writ petitions and also the docket proceedings in S.A.No.301 of 2017 (old S.A.No.182 of 2016) to support his contention that the petitioners are only trying to procrastinate and stall the proceedings.

W.P.No.4828 of 2017 was filed by the petitioners assailing the order dated 28.12.2016 passed by the Tribunal in I.A.No.2817 of

2016 filed in the S.A. By the said order, the Tribunal disallowed the petitioners' plea to call for the original loan documents executed by them in 2011 along with the original loan renewal documents executed in 2013 from the bank and to subject the same to examination by forensic experts for an opinion as to the signatures, thumb impressions, age of ink, etc., on the ground that the latter set of documents were never executed by them. However, when the writ petition was taken up for hearing, the learned senior counsel appearing for the petitioners informed this Court that his clients were only interested in production of the documents and were no longer desirous of subjecting the same to forensic examination. The learned counsel for the bank then informed this Court that the originals of the documents had already been produced before the Tribunal and in the event they were required, they would again be produced. Taking note of the submission of the learned counsel for the bank, this Court closed the writ petition, *vide* order dated 23.06.2017.

Thereafter, the bank filed W.P.No.38857 of 2017 before this Court aggrieved by the inaction of the Tribunal in disposing of the S.A. By order dated 17.11.2017, this Court took note of the fact that the Tribunal had granted an interim order as long back as on 28.09.2016, interdicting the bank from issuing the sale certificate in favour of the auction purchasers, and that the S.A. had undergone 20 adjournments after 14.07.2017, when the Tribunal adjourned the matter intending to hear arguments in the main S.A. This Court further observed that the auction purchasers, having paid the entire sale consideration, were prevented from obtaining the sale certificate by virtue of the interim order granted by the Tribunal as long back as in September, 2016 and directed the Tribunal to endeavour to

dispose of either the main S.A. or at least the I.A. in which the stay order had been granted. It was pursuant to this order that the Tribunal permitted issuance of the sale certificate to the auction purchasers, by its Docket Order dated 05.12.2017.

The final writ petition, W.P.No.42417 of 2017, was filed by the petitioners assailing the Docket Order dated 05.12.2017 of the Tribunal permitting the bank to issue a sale certificate in favour of the auction purchasers. By order dated 14.12.2017, this Court observed that issuance of the sale certificate had been made subject to the outcome of the S.A. and opined that no purpose would be served in interdicting the bank from completing registration of the document. This Court however made it clear that even such registration would be subject to the outcome of the S.A. This Court further observed that as the S.A. was of the year 2016, the Tribunal should endeavour to dispose of the same on merits expeditiously as the rights of the parties were kept hanging in balance.

The docket proceedings in the S.A. demonstrate the number of adjournments that the case has undergone. It appears that it was adjourned to 24.01.2017 for arguments in the main S.A., but interlocutory applications galore were filed thereafter stalling the hearing of the S.A. As pointed out by this Court in the order in W.P.No.38857 of 2017, merely because I.As. are filed in quick succession, the Tribunal cannot keep adjourning the main case.

Be it noted that Section 17(5) of the SARFAESI Act requires the securitization application to be disposed of normally within 60 days from the date of making of such an application. The *proviso* thereto states that the Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, ensuring that the total

period of pendency of the application with it should not exceed four months from the date of making of the securitization application. In the present case, the filing of the subject securitization application dates back to May, 2016, but it is yet to conclude.

That apart, this Court finds merit in the submission of Sri Ambadipudi Satyanarayana, learned counsel, that the present attempt of the petitioners to seek further documents is only aimed at stalling the proceedings. The prayer in the S.A., as set out *supra*, manifests that the auction sale held on 15.09.2016 has already been subjected to challenge. As the very auction sale is assailed, the sale certificate issued pursuant thereto would not survive independently, if the said sale is set aside. Further, a sale certificate would normally be issued by the bank in the form prescribed in Appendix V to the Security Interest (Enforcement) Rules, 2002. Therefore, nothing of substance would emerge from actual furnishing of the said sale certificate to the petitioners. Further, as the said certificate is only the culmination of the auction sale, which is already under challenge, no separate prayer needs to be made to set it aside. The absence of the sale certificate is therefore of no real consequence.

Coming to the prayer of the petitioners to produce the General Power of Attorney dated 31.03.2011, as rightly pointed out by the Tribunal, when the very maker of this Power of Attorney, M.Aswani Kumar, has no grouse as to its contents or the developments thereon it is not for the petitioners to suddenly raise this issue. Significantly, neither M.Aswani Kumar nor M.S.K.Prasad is a party to the S.A. Further, perusal of the application in S.A.No.301 of 2017 (old S.A.No.182 of 2016) demonstrates that there was no pleading as to the aspect now sought to be raised in the context of this document.

In the absence of foundational pleadings, the petitioners cannot seek to build up a new case now on the strength of this document. All the more so, when the parties to the said document are not even before the Tribunal.

On the above analysis, this Court finds that neither of the orders passed by the Tribunal, subjected to challenge in these writ petitions, brooks any interference. The Tribunal shall therefore endeavour to dispose of the main S.A. unhindered by any further attempts by the petitioners to file interlocutory applications therein. The Tribunal shall take note of the statutory mandate of Section 17(5) of the SARFAESI Act and act accordingly.

Both the writ petitions are utterly devoid of merit and are accordingly dismissed.

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



SANJAY KUMAR, J

P.KESHAHA RAO, J

23rd MARCH, 2018

Note : L.R.Copy to be marked.

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