

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.1436 of 2018

30.04.2018

Between:

Kommuri Subramanyam and another

..Petitioners

and

M/s. Shriram City Union Finance Ltd.,
Hyderabad and others

..Respondents

Counsel for the petitioners: Mr.V.S.R.M.V.Prasad Sanaka

Counsel for respondent No.1: Mr.Maheswara Rao Kunchem

Counsel for respondent Nos.2 to 7: --

The Court made the following:



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

This Civil Revision Petition arises out of E.P.No.40 of 2018 on the file of learned III Additional District Judge, Guntur (for short 'the execution Court').

2. The petitioners are the guarantors in respect of the loan obtained by respondent Nos.2 to 7 from respondent No.1. Respondent No.1, who obtained arbitration award, filed the aforementioned E.P. for sale of the properties of the petitioners. In the aforementioned E.P., a notice has been issued to the petitioners by the execution Court.

3. Today, at the hearing, Mr.V.S.R.M.V.Prasad Sanaka, learned counsel for the petitioners, has advanced two submissions, *viz.*, (i) that respondent Nos.2 to 7, who are the principal borrowers, mortgaged valuable properties to respondent No.1, on the strength of which, loans have been sanctioned and paid and that without proceeding against the mortgaged properties, respondent No.1 has been seeking to sell the personal properties of the petitioners, who are only the guarantors, and (ii) that the execution Court has no justification to entertain the E.P. as it does not fall under the description of 'the Court' as defined under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. To buttress his submission,

he relied upon the judgment of a Division Bench of this Court in **Potlabathuni Srikanth vs. Shriram City Union Finance Ltd.**¹.

4. Mr.Maheswara Rao Kuncheam, learned counsel for respondent No.1, has submitted that the revision petition is premature for the reason that no order adverse to the interests of the petitioners has been passed so far and that the petitioners can raise all the legally permissible objections before the execution Court. Alternatively, he has submitted that respondent Nos.2 to 7 have sold the mortgaged properties to third parties and that on coming to know about the same, a notice has been issued to them. He has further submitted that the petitioners, being the guarantors, their liability is coextensive with that of respondent Nos.2 to 7 and that therefore, the petitioners cannot question the option exercised by respondent No.1 to proceed against their properties. Opposing the second submission of the learned counsel for the petitioners, the learned counsel has placed heavy reliance on the judgment of a Division Bench of this Court in **Lakhamraju Sujatha vs. Yuvaraj Finance Pvt. Ltd.**,².

5. As rightly submitted by the learned counsel for respondent No.1 so far, no order adverse to the interests of the petitioners has been passed by the execution Court. Therefore, the petitioners can

¹ 2016 (2) ALD 10 (DB)

² 2010(1) ALD 153 = 2010(1) ALT 173

raise all the legally sustainable pleas in the execution petition. Though the judgments of the two Division Benches referred to supra are seemingly conflicting with each other, we are of the opinion that it is premature for this Court to adjudicate upon the issue of jurisdiction of the execution Court to entertain and adjudicate the E.P. Therefore, the petitioners are permitted to raise the issue relating to the jurisdiction of the said Court also while resisting the E.P. on merits.

6. In the above view of the matter, the Civil Revision Petition is dismissed with liberty to the petitioners in terms of the observations made hereinbefore.

7. As a sequel to dismissal of the C.R.P., I.A.No.1 of 2018 filed by the petitioners for interim relief stands dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

D.V.S.S.SOMAYAJULU, J

30th April, 2018
GHN