

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

WRIT PETITION No.6722 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the demand notice dated 02.02.2018 issued by the Andhra Pradesh State Financial Corporation, the respondent herein, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

Sri Y.N.Vivekananda, learned counsel appearing for the respondent Corporation, would point out that the petitioner does not fall within the ambit of borrower, as defined under Section 2(f) of the SARFAESI Act, as he is the brother of the guarantor and claims through the vendees of the said guarantor. Learned counsel would further point out that a writ petition would not lie against a demand notice.

We find merit in the submission of the learned counsel as regards the maintainability of the writ petition given the observations of the Supreme Court in Punjab National Bank v. Imperial Gift House¹ and Devi Ispat Limited v. State Bank of India².

Though Sri R.Sushanth Reddy, learned counsel, would place reliance on Section 36 of the SARFAESI Act to state that the recovery proceedings initiated by the respondent Corporation are barred by limitation, we find that the said provision also makes reference to measures under Section 13(4) of the SARFAESI Act and does not speak of interference at the initial stage of issuance of a demand notice under Section 13(2) thereof.

¹ (2013) 14 SCC 622

² (2014) 5 SCC 762

In that view of the matter, we are of the opinion that no redressable cause of action has arisen as of now. The issue of locus of the petitioner is also left open while giving him liberty to take appropriate measures in accordance with law as and when such a cause of action arises.

The writ petition is dismissed subject to the above observation and liberty.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Dt: 30.07.2018.
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