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

WRIT PETITION No. 14862 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

The petitioner is aggrieved by the rejection of the Securitisation Application filed by him *vide* S.A.I.R.No.92 of 2018 by the Debts Recovery Tribunal-I, Hyderabad, by docket order dated 10.04.2018. This order reads as under:

> "The Registry has taken objection to number the application on the ground that the Applicant is a third-party to the SARFAESI proceedings initiated by the Respondent Bank, who already sold the application schedule property in favour of Respondent No.3. A further objection has been taken that, the mother of the Applicant who had executed GPA in favour of the Applicant, expired on 06.03.2018 and as such the GPA is invalid. However, at the request of the Ld. Counsel for the Applicant, the matter is placed before the Bench today.
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> Ld. Counsel appearing for the Applicant submits that the Applicant is one of the legal heirs of his deceased mother and that Applicant's sisters have filed a partition suit in OS.No.65/2018 on the file of I Addl. Chief Judge, City Civil Court, Secunderabad against the Applicant and another and obtained status quo orders in IA.No.463/2018 on 22.03.2018 in respect of the petition schedule properties therein, which are part of the subject matter of the property in the present application. Therefore, Ld. Counsel submits that the Applicant herein is having share in the application schedule property and as such he being an aggrieved person by the action taken by the Respondent Bank, can file an application u/s. 17 of the SARFAESI Act, 2002.
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> Admittedly, the Respondent Bank had already sold away the said property under the provisions of the SARFAESI Act, 2002, in favour of Respondent No.3 and has also issued the sale certificate. It is also an admitted fact that originally the property was standing in the name of the Applicant's mother viz., Smt. A. Sharada Devi and she expired on 06.03.2018. As of date no partition of the property has taken place and no right, title and interest has accrued to the Applicant towards his share in the property. Under such circumstance, it cannot be said that the Applicant is an aggrieved person to file an application before this Tribunal u/s. 17 of the SARFAESI Act, 2002.
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> In view of the above, the present SA.IR.No.92/2018 is hereby rejected."

Sri Manohar Reddy Nandyala, learned counsel, appears for the Punjab National Bank, the first respondent herein. Respondents 2 to 5 are shown as not necessary parties to the writ petition.

Sri M.V. Suresh, learned counsel for the petitioner, would point out that in terms of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), not only the borrower but also 'any person aggrieved' is entitled to maintain an application thereunder before the jurisdictional Debts Recovery Tribunal. He would contend that the Tribunal was in error in holding that the petitioner does not fall within the ambit of the expression 'any person aggrieved'.

A Division Bench comprising one of us, SK,J, and another learned Judge had occasion to consider the scope of the expression 'any person aggrieved' in Dommati Prashanthi vs. Indian Bank[1] and held to the effect that the expression is subject to the rider that such a person's grievance must be a legally founded tangible one.

The afore-stated docket order dated 10.04.2018 passed by the Tribunal in the case on hand indicates that the Tribunal was apprised of the fact that the original owner of the secured asset, A. Sharada Devi, mother of the petitioner/applicant, had expired on 06.03.2018. Despite being made aware of this fact, the Tribunal merely adverted to the pendency of the partition suit and observed that as no partition has taken place as on date, no right, title or

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[1] 2018 SCC On Line Hyd 13 = 2018 (3) ALD 92 (D.B)

interest accrued to the petitioner/applicant entitling him to maintain an application before it under Section 17 of the SARFAESI Act in the capacity of a person aggrieved. This Court is at a loss to understand as to how the Tribunal did not realise that upon the death of his mother, who is stated to have died intestate, the petitioner/applicant would be one of her heirs entitled to a share in her property. The petitioner/applicant therefore demonstrated that, *prima facie,* he has an interest in the secured asset.

It is not in dispute that the Punjab National Bank, the secured creditor, is yet to take measures to put the said secured asset to sale. However, the Tribunal wrongly noted to the effect that the said Bank had already sold away the secured asset under the provisions of the SARFAESI Act in favour of the third respondent in the S.A. The third respondent in the S.A. is, in fact, the borrower from the Bank and not the auction purchaser. As stated earlier, there was no auction purchaser at all in the picture, as the Bank was yet to sell the property.

Given the afore-stated facts, it is clear that the Tribunal passed the docket order dated 10.04.2018 without application of mind either to the facts or to the legal position as to the interest of the petitioner/applicant in the property of his mother after her death.

On the above analysis, this Court holds that the petitioner/applicant would squarely fall within the ambit of the expression 'any person aggrieved' and his grievance can be said to be a legally founded tangible one. He would therefore be entitled to maintain a Securitisation Application before the jurisdictional Debts Recovery Tribunal.

The writ petition is accordingly allowed setting aside the docket order dated 10.04.2018 passed by the Debts Recovery Tribunal-I, Hyderabad, in S.A.I.R.No.92 of 2018. As we are informed that the recent change of jurisdictions may have a role to play in the matter, the Securitisation Application shall stand restored to the file of the jurisdictional Debts Recovery Tribunal as on date for consideration on its own merits and in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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JUSTICE SANJAY KUMAR

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JUSTICE T. AMARNATH GOUD

Date: 18.06.2018
Note: Issue CC in three days
B/o
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