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

* * * *

WRIT PETITION NOs.7315 AND 43053 OF 2017

W.P.No.7315 of 2017:

K.Satyanarayana Murthy ... Petitioner

Vs.

The Canara Bank rep. by its Chairman &
Managing Director and others ... Respondents

W.P.No.43053 of 2017:

K.Satyanarayana Murthy ... Petitioner

Vs.

The Canara Bank, MG Road Branch,
rep. by its Authorised Officer and another ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 19th JUNE, 2018

SUBMITTED FOR APPROVAL:

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

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

T.AMARNATH GOUD, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
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<Gist:

>Head Note:

! Counsel for petitioner in both WPs. : Sri P.Rajasekhar

^ Counsel for respondent Nos.1 to 4 in WP No.7315/2017 and respondent No.1 in WP No.43053/2017 : Sri N.Vijay

^ Counsel for respondent No.5 in WP No.7315/2017 and respondent No.2 in WP No.43053/2017 : Sri G.K.Deshpande

? CASES REFERRED:

1. Legalcrystal.com/1183201 = 2016 SCC OnLine Delhi 5217
2. ILR (2007) II DELHI 593
3. (1996) 6 SCC 606
4. (2013) 9 SCC 620

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

WRIT PETITION NOs.7315 AND 43053 OF 2017

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

Parties and issues being the same in both these writ petitions, they are amenable to disposal by way of a common order.

K.Satyanarayana Murthy, the petitioner in these two cases, was the highest bidder in the sale conducted on 21.11.2015 by the Canara Bank (*hereinafter*, 'the bank') under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (*for brevity*, 'the SARFAESI Act') in relation to a single storied house property bearing No.2-64/4/1, Plot No.7, Sy.No.10, Gachibowli, Serilingampally Mandal and Municipality, Ranga Reddy District. His bid stood at Rs.79,91,000/-. The sale was confirmed in his favour by the bank under letter dated 23.03.2016 and the entire sale consideration was deposited by him by 24.03.2016. Sale certificate dated 12.01.2017 was also executed by the bank in favour of the petitioner. This item of property belonged to G.Jayamma, the fifth respondent in W.P.No.7315 of 2017, the second respondent in W.P.No.43053 of 2017. She stood as a guarantor for the loan facilities extended by the bank to M/s. Eversure Aqua Solutions Private Limited. The said loan account having been declared as a non-performing asset, proceedings were initiated under the SARFAESI Act. G.Jayamma thereupon approached the Debts Recovery Tribunal, Hyderabad, under Section 17 of the SARFAESI Act, *vide* S.A.No.499 of 2014. The said Securitization Application was dismissed by the Tribunal by order dated 11.04.2016. The bank thereupon filed Crl.M.P.No.878 of 2015 before the learned Chief Metropolitan Magistrate, Ranga Reddy District at

L.B.Nagar, under Section 14 of the SARFAESI Act seeking to take possession of the subject property from G.Jayamma. An Advocate-Commissioner was appointed therein under Order dated 11.11.2015 of the Chief Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar. Despite the same, the bank failed to take effective steps for taking possession of the item sold and informed the petitioner, *vide* letter dated 02.06.2016, that the National Commission for Scheduled Castes was conducting an enquiry in the matter as G.Jayamma belonged to a Scheduled Caste community and requested him to bear with it till the outcome of the enquiry. Aggrieved by the inaction on the part of the bank in executing a registered conveyance deed and also delivering physical possession of the property sold to him, the petitioner filed W.P.No.7315 of 2017 seeking a direction to the bank to execute a registered sale deed and deliver physical possession of the said property.

The bank filed a counter in this writ petition through its Chief Manager at its M.G.Road Branch, Hyderabad. Therein, it stated as follows:

The loan account of M/s.Eversure Aqua Solutions Private Limited became a non-performing asset, whereupon demand notice under Section 13(2) of the SARFAESI Act was issued on 25.01.2014. S.A.No.499 of 2014 was filed before the Debts Recovery Tribunal, Hyderabad, by G.Jayamma, a guarantor in relation to the said loan, on 14.07.2014. This S.A. was filed in relation to the possession notice issued by the bank under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'). Interim order dated 14.07.2014 was granted by the Tribunal staying all further proceedings pursuant to the possession notice subject to the condition that G.Jayamma deposit Rs.20,00,000/- in two instalments – the first instalment within four weeks and the second instalment within four weeks thereafter. As she failed to comply with the interim order, the bank proceeded with the sale of the secured asset under the e-auction notice dated 15.10.2015. While so, G.Jayamma filed I.As. on 16.11.2015, five days before the sale was scheduled to be held, seeking amendment of her prayer and stay of the auction proceedings. By order dated 20.11.2015, the Tribunal permitted the bank to go ahead with the sale but directed it not to confirm the sale until further orders. The S.A. was dismissed by the Tribunal on 18.03.2016 and thereupon, it went ahead with confirmation of the sale in favour of the petitioner, the highest bidder, by issuing the sale confirmation letter dated 22.03.2016. Upon dismissal of the S.A., the Authorized Officer also took steps under Section 14 of the SARFAESI Act for taking possession and an Advocate-Commissioner was appointed by the learned Chief Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar, on 19.11.2015 in exercise of power under Section 14 of the SARFAESI Act. However, due to the intervention of the National Commission for Scheduled Castes which proposed to conduct a thorough enquiry, the bank did not take further steps. The enquiry was conducted at New Delhi on 14.08.2016 and 13.09.2016 and the executives of the bank personally attended the same. The Commission requested the bank to call the borrowers and guarantors for an amicable settlement of the loan account and the said proposal was still in process.

At this stage, it would be appropriate to consider the effect of such directions by the National Commission. In STATE BANK OF INDIA V/s. THE NATIONAL COMMISSION FOR SCHEDULED CASTES[1], a recommendation/order issued by the National Commission for Scheduled

[1] Legalcrystal.com/1183201 = 2016 SCC OnLine Delhi 5217

Castes was under challenge. Reference was made by the Delhi High Court to its earlier decision in PROFESSOR RAMESH CHANDRA V/s. UNIVERSITY OF DELHI[2], wherein it was held that the National Commission constituted under Article 338 of the Constitution did not have power, like the civil Court, to issue binding and executable decrees. On facts, the Delhi High Court found that the Commission lacked inherent jurisdiction to entertain the complaint. The Delhi High Court categorically opined that the Commission was not a parallel forum for adjudicating disputes between litigants.

More importantly, in ALL INDIA INDIAN OVERSEAS BANK SC AND ST EMPLOYEES' WELFARE ASSOCIATION V/s. UNION OF INDIA[3], the Supreme Court held that the National Commission, though it has a limited power of investigating any matter and in that regard it is armed with the powers of the civil Court, it has no power to grant injunctions, temporary or permanent.

In the light of the aforestated case law, it is clear that the National Commission had no power to issue any binding directions to the bank and the bank need not have stayed its hand or paid any heed to the directions issued by the said Commission. Be that as it may.

G.Jayamma, the fifth respondent in W.P.No.7315 of 2017, filed a counter, wherein she stated as follows: As against the dismissal of S.A.No.499 of 2014 by the Tribunal, an appeal was preferred by her before the Debts Recovery Appellate Tribunal, Kolkata, in Tender No.88 of 2017 and the same is pending. She alleged that the bank had failed to follow the mandatory provisions of the SARFAESI Act and therefore, the auction in favour of the petitioner was defective. As against the order

[2] ILR (2007) II DELHI 593
[3] (1996) 6 SCC 606

passed by the Chief Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar in Crl.M.P.No.878 of 2015, she filed S.A.No.1398 of 2017 and the same was pending. In S.A.No.1398 of 2017 filed by G.Jayamma, an interim order was passed on 19.09.2017. The said order was passed in I.A.No.2704 of 2017 filed in S.A.No.1398 of 2017 seeking stay of all further proceedings including taking physical possession of the schedule property pursuant to the warrant issued in Crl.M.P.No.436 of 2017 on the file of the Chief Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar. By the said order, the Tribunal granted interim stay of all further proceedings including taking physical possession of the schedule property subject to deposit of 30% of the total outstanding dues in two equal instalments - the first instalment of 15% was directed to be deposited within one week and the second instalment within two weeks thereafter. In the event of default, the Tribunal made it clear that the stay would stand vacated and the bank would be at liberty to proceed further in accordance with law. G.Jayamma stated that she had already deposited the amount as directed by the Tribunal.

Thereupon, W.P.No.43053 of 2017 was filed by the petitioner on 13.12.2017 to quash S.A.No.1398 of 2017 on the file of the Debts Recovery Tribunal, Hyderabad, on the ground that it was barred by the principle of constructive *res judicata*, Order 2 Rule 2 CPC, and the final adjudication of S.A.No.499 of 2014. In the affidavit filed in support thereof, he claimed that having suffered an adverse order in S.A.No.499 of 2014, it was not open to G.Jayamma, the second respondent in the writ petition, to drag on the matter by filing a fresh Securitisation Application. He alleged that entertainment of the Securitisation Application filed by

G.Jayamma was wholly without jurisdiction and accordingly sought a writ of *certiorari* to quash the same.

Sri P.Rajasekhar, learned counsel for the petitioner, would contend that G.Jayamma is merely delaying the proceedings by filing one application after the other. He would vehemently assert that entertainment of the Securitisation Application was wholly unjustified and bereft of jurisdiction.

Per contra, Sri G.K.Deshpande, learned counsel for G.Jayamma, would assert that the cause of action in S.A.No.499 of 2014 was wholly different from that in S.A.No.1398 of 2017 and therefore, the claim of the petitioner in that regard was without basis.

The issue would therefore turn upon the scope of the two Securitisation Applications.

Perusal of the final order passed in S.A.No.499 of 2014 would demonstrate that the said Securitisation Application was filed by G.Jayamma on 16.07.2014 challenging the possession notice dated 24.06.2014. Thereafter, she filed I.A.Nos.3405 and 3406 of 2015 in the said Securitisation Application seeking amendment of her prayer and sought to challenge the sale scheduled to be held by the bank pursuant to the auction notice dated 15.10.2015, fixing the date of sale as 21.11.2015. In effect, the challenge in the Securitisation Application was directed against the auction notice dated 15.10.2015 issued by the bank. The grounds for challenge were that there was violation in relation to the mandatory procedure prescribed under Rule 8 (6) and (7) of the Rules of 2002 apart from non-compliance with the mandate of Section 13 (3A) of the SARFAESI Act. By the final order, the Tribunal held that there was sufficient compliance by the bank and as G.Jayamma did not deposit the amounts as per the earlier conditional order, she was only trying to delay and defeat the recovery process of the bank and dismissed the Securitisation Application. Though this order mentioned the date of the order as 18.03.2016/11.04.2016 in the first page, the signature of the Presiding Officer of the Tribunal on the last page is accompanied by the date 11.04.2016.

While so, S.A.No.1398 of 2017 was filed by G.Jayamma with the following prayer:

> '6. a. To declare the action and proceedings of the Respondent No 1 in approaching the CMM Cyberabad RR Dist for taking possession in CRL MP No 436/2017 dated 21/7/17 as illegal and in violation of the provisions of Sarfaesi Act and its Rules and consequently set-aside the said steps initiated by the respondent No 1 bank under the provisions of Section 14 of the Sarfaesi Act.
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> b. To Declare that the Auction conducted on 21-11-2015 is illegal and against the provisions of Sarfaesi Act and the Rules made thereunder.
>
> c. To declare that the Sale Certificate DT 12-01-2017 issued by respondent No 1 in favour of Respondent No 2 as illegal and in violation of Rule 9(3) and 9(4) of the Sarfaesi Act and Rules (Security Interest (Enforcement) Rules 2002) and set-aside the same.
>
> d. To order re-delivery of the SA Schedule Property to the applicants.
>
> e. To award costs of this Application.
>
> f. To Award damages and compensation to the tune of Rs. 10,00,000/- towards DAMAGES for all the illegalities committed by the respondent, as detailed and stated above in Para No 5 of the application.
>
> g. To grant any other relief or reliefs as this Honourable Tribunal deems fit and necessary in the interest and to which the Applicants are found entitled.'

Section 17 of the SARFAESI Act provides for an application being filed against any measure referred to in sub-section (4) of Section 13 thereof by a person aggrieved, including the borrower. There is therefore no fetter in the provision as to the number of applications that can be filed thereunder. Each measure under Section 13(4) can be subjected to a separate attack by way of an independent Securitisation Application under Section 17 of the SARFAESI Act. S.A.No.499 of 2014 was initially filed only against the possession notice issued by the bank. Thereafter, the prayer in the Securitisation Application was amended and a challenge was laid to the auction notice dated 15.10.2015 issued by the bank proposing to hold the auction sale on 21.11.2015. That was therefore the ultimate subject matter of the said Securitisation Application.

As rightly pointed out by Sri G.K.Deshpande, learned counsel, the post-sale events could not have been the subject matter of S.A.No.499 of 2014. It is an admitted fact that an application under Section 14 of the SARFAESI Act was moved by the bank long after the dismissal of S.A.No.499 of 2014. It was filed only in the year 2017, by which time S.A.No.499 of 2014 itself stood dismissed. In terms of the law laid down by the Supreme Court in STANDARD CHARTERED BANK V/s. V.NOBLE KUMAR[4], a Securitisation Application is very much maintainable against an order passed by a Magistrate in exercise of power under Section 14 of the SARFAESI Act. Therefore, G.Jayamma was very much within her right in filing an independent Securitisation Application in so far as the order under Section 14 of the SARFAESI Act was concerned. However, in the light of the dismissal of S.A.No.499 of 2014 by the Tribunal, it was not open to G.Jayamma to again reopen any issue that stood settled by such adjudication. We are informed that the said order of the Tribunal in S.A.No.499 of 2014 is the subject matter of appeal with delay before the Appellate Tribunal at Kolkata. Therefore, it is for G.Jayamma to pursue her appellate remedies in relation to any findings of

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[4] (2013) 9 SCC 620

the Tribunal in S.A.No.499 of 2014 and she cannot seek to reopen such issues by raising them once again in the fresh Securitisation Application. In this context, prayer (b) in S.A.No.1398 of 2017 is clearly barred as she seeks to challenge the auction held on 21.11.2015 on the ground that the same was contrary to the provisions of the SARFAESI Act and the Rules made thereunder. As this was the very challenge raised by her in S.A.No.499 of 2014, post-amendment of her prayer therein, she cannot raise this issue again before the Tribunal.

However, though Sri P.Rajasekhar, learned counsel, would contend that prayer (c) in S.A.No.1398 of 2017 would also be barred, we are not inclined to agree. This prayer is in relation to the events that took place after the auction sale on 21.11.2015. G.Jayamma raised new grounds of challenge in S.A.No.1398 of 2017 in relation to violation of Rules 9(3) and (4) of the Rules of 2002, which would only arise after conducting of the auction sale. These issues were therefore not within the zone of consideration in S.A.No.499 of 2014. As the Tribunal entertained S.A.No.1398 of 2017 and has also passed interim orders therein, it is for the petitioner, who is a party thereto, to protect his own interest by putting forth his case before the Tribunal.

In the light of the pendency of S.A.No.1398 of 2017 before the Tribunal and the interim order granted therein, the prayer of the petitioner in W.P.No.7315 of 2017 to complete the registration formalities and deliver possession of the secured asset sold to him cannot be accepted at this stage. W.P.No.7315 of 2017 is accordingly dismissed.

In so far as W.P.No.43053 of 2017 is concerned, this Court finds that it was well within the right of G.Jayamma to file S.A.No.1398 of 2017 before the Debts Recovery Tribunal, Hyderabad, in relation to issues that did not fall for consideration earlier in S.A.No.499 of 2014. In that view of the matter, the Tribunal shall consider and adjudicate the prayer of G.Jayamma in S.A.No.1398 of 2017 for various reliefs as set out in para 6 therein, except for the challenge in para 6(b) to the auction conducted on 21.11.2015 being illegal on the ground that it was against the provisions of the SARFAESI Act and the Rules made thereunder.

Given the sequence of events and the fact that the sale in favour of the petitioner was held as long back as on 21.11.2015, the Tribunal shall endeavour to dispose of the Securitization Application within four months from today, keeping in mind the statutory mandate of Section 17(5) of the SARFAESI Act.

To sum up, W.P.No.7315 of 2017 is dismissed and W.P.No.43053 of 2017 stands disposed of with the aforestated directions. Pending miscellaneous petitions, if any, in both the writ petitions shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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T.AMARNATH GOUD,J

19th JUNE, 2018

L/R copy to be marked - Yes
B/o PGS