

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

WRIT PETITION NO.22566 of 2017

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

'For the reasons mentioned in the accompanying affidavit, I therefore most humbly pray that this Hon'ble Court may be pleased to issue an order, direction or Writ more particularly one in the nature of Writ of Mandamus declaring the notice u/s 13(2) and 13(4) and u/s 14(1 &2) of SARFAESI Act 2002 for taking possession of a dead person property (bearing residential flat no.205 on second floor (fallen to share of the Developer) admeasuring 1123 Sft. including common areas along with undivided share of land of 35 sq. yards of the premises bearing MCH No. 1-9-648 Known as Maurya Towers situated at Vidya Nagar Hyderabad) in pursuance of the orders passed by the CMM court in Criminal Misc. application No.837/2017 u/s 14 of SARFAESI Act as illegal, void, arbitrary in contravention of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and taking possession of a dead person's property is breach of the rights enshrined under articles 14, 21 and 300-A of the Constitution of India and the said order is liable to be set aside by redelivering the possession of the property to the Petitioner in the interest of justice and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

It appears that the loan account of one Vemula Kumar Goud, the brother of the petitioner, was transferred by the State Bank of India to M/s. Asset Reconstruction Company (India) Limited (*for brevity*, 'the Reconstruction Company'), long after his death. Unmindful and ignorant of the same, it appears that the said Reconstruction Company initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), for recovery of the outstanding dues in the said loan account. Pursuant thereto, the Reconstruction Company also

filed CrI.M.P.No.837 of 2017 under Section 14 of the SARFAESI Act before the learned Chief Metropolitan Magistrate, Hyderabad, seeking to take possession of the secured asset, a residential flat. By order dated 24.03.2017 passed therein, the learned Magistrate appointed an Advocate-Commissioner to do the needful. It appears that the Reconstruction Company was accordingly handed over the physical possession of the said flat. It is at this stage that the brother of the deceased borrower filed the present writ petition.

It is a settled legal position that an order passed either in favour of or against a dead person would be null and void except to the extent the Supreme Court distinguished this principle in N.JAYARAM REDDI V. REVENUE DIVISIONAL OFFICER AND LAND ACQUISITION OFFICER¹.

Sri S.Maruthi Rao, learned counsel representing Sri R.Rajendra Prasad, learned counsel for the Reconstruction Company, would fairly concede that the order was secured against a dead person, but pursuant thereto, the possession of the secured residential flat has already been taken over. He would further state that as all the Class I legal heirs of the borrower in terms of the Hindu Succession Act, 1956 (*for brevity*, 'the Act of 1956'), have also expired, the Reconstruction Company would have to be provided with sufficient proof of the status of the persons claiming to be the inheriting Class II legal heirs of the said borrower before possession can be redelivered to them.

Sri P.Ramachandran, learned counsel for the petitioner, fairly concedes that the deceased borrower also has two sisters. In view of the same, all three of them would be entitled to claim inheritance in their

¹ (1979) 3 SCC 578 = AIR 1979 SC 1393

deceased brother's property being heirs in the same entry in Class II in the Schedule to the Act of 1956.

Further, this Court finds merit in the submission of Sri S.Maruthi Rao, learned counsel, that the petitioner and his sisters would necessarily have to produce proof of their status as the surviving heirs before they can seek redelivery of the subject flat.

Sri P.Ramachandran, learned counsel, would state that as the petitioner and his sisters would require some amount of time to secure a legal heir certificate in proof of their status, the Reconstruction Company should protect their interests by letting out the subject flat, so that it yields some income.

The Reconstruction Company is accordingly directed to retain lawful possession over the subject flat but let out the same, if it so chooses, so that the income accruing thereon can be adjusted against the loan account dues of the deceased borrower. Further, the Reconstruction Company is given liberty to initiate measures afresh under Section 13(4) of the SARFAESI Act against the legal heirs of the deceased borrower after securing sufficient proof of their status.

The writ petition is accordingly disposed of with the above directions. Interim order dated 10.07.2017 shall stand vacated.

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

SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:10.07.2018
GJ

