THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

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

WRIT PETITION NO.6874 OF 2017

ORDER: {Per the Hon'ble Sri Justice Sanjay Kumar}

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

> "...to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondent in affixing the Possession Notice dated 07.02.2017 purported to have issued under Section 13(4) of the SARFAESI Act with Rule 8 of the Security Interest Enforcement Rules, 2002 on the premises bearing Flat No.G-2, Ground Floor, Chanikya Enclave, Plot Nos.53 & 54, Sri Laxmi Housing Estates, in Survey Nos.181 and 183 situated at Pragathi Nagar, Qutbullapur Mandal now Bachupally Mandal, Medchal District, previous Ranga Reddy District, without issuing any prior notice and without following the procedure contemplated under the SARFAESI Act, as being illegal, arbitrary, unilateral and unconstitutional without any authority and consequently set aside the same and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case."

Sri R.Satyanarayana Swamy, learned counsel for the petitioner, would state that the petitioner purchased the subject property on 30.12.2013 under registered Sale Deed bearing document No.12926 of 2013. Learned counsel would further state that the vendor was an employee of the HDFC Bank Ltd., the respondent herein, and led the petitioner to believe that he had already discharged the loan availed by him from the said bank. A copy of the 'no objection certificate' ("NOC", for brevity) dated 31.12.2013 said to have been communicated by the bank by e-mail is also placed on record. Learned counsel would therefore assert that the respondent-bank has no right to proceed against the property purchased by the petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act", for brevity).

The HDFC Bank Limited filed a counter through its Legal Manager. Therein it is stated as follows:

Nagella Naga Srinivasulu, the vendor of the petitioner, worked as a Teller Authoriser/Deputy manager at the Chandrayangutta Branch of the Bank. He was promoted as a Manager in June, 2009 and as a Senior Manager in December, 2010. He was transferred to Hindupur Branch, Ananthapur District, as Pool-Branch Head in the year 2013. He availed various loans from the bank in the years 2009-10. The housing loan and personal loan availed by him were not repaid. The housing loan was in relation to the very same property which was sold by him to the petitioner. The Legal Manager of the bank stated that the housing loan was sanctioned under the Staff Housing Loan category and the borrower submitted photo-copies of the link documents of the property and also submitted the original Agreement of Sale dated 20.05.2010 entered into by him with one Opinder Jain. Though the loan amount was disbursed to the said Opinder Nain, who was the vendor, Nagella Naga Srinivasulu did not submit the original sale deed executed in his favour by the said Opinder Jain. Unmindful of this aspect, the bank declared the loan account of Nagella Naga Srinivasulu as a 'non-performing asset' long thereafter and issued demand notice dated 15.09.2016 under Section 13(2) of the SARFAESI Act. This notice was followed by a possession notice under Section 13(4) of the SARFAESI Act. That was the cause for filing of this Writ Petition by the vendee of the said Nagella Naga Srinivasulu, the petitioner herein. The bank also denied issuing a NOC or clearance certificate with regard to the repayment of the loan and asserted that as on date, the outstanding dues in the said loan account stood at Rs.19,12,500/-.

Though the bank also raised the issue of maintainability of this Writ Petition against a private bank, we are of the opinion that when even a private bank is bound to follow the procedure stipulated in the statute, viz., the SARFAESI Act, any failure on its part to abide by such mandatory procedure would enable an aggrieved party to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In the present case, going by the averments made in the counter affidavit, it is clear that the HDFC Bank Ltd. has no proof of any security interest having been created in the property purchased by the petitioner. No registered mortgage was executed by his vendor nor does the bank have any original title documents, whereby it can be considered that an equitable mortgage by deposit of title deeds was created. Except for a loan agreement executed by Nagella Naga Srinivasulu, no document is available with the bank whereby it can assert that it has any security interest in the property purchased by the petitioner. Unless the bank is in position to demonstrate that it has such a security interest as defined under Section 2(1)(f) of the SARFAESI Act, it cannot maintain any proceedings thereunder. In consequence, issuance of a demand notice by the bank under Section 13(2) of the SARFAESI Act followed by a possession notice under Section 13(4) of the SARFAESI Act thereof is invalid in the eye of law.

The Writ Petition is accordingly allowed setting aside the said proceedings. This order shall however not preclude the respondent-bank from initiating measures for recovery of its outstanding dues in relation to loan account of Nagella Naga Srinivasulu in accordance with law before the appropriate forum. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

(SANJAY KUMAR, J)

(D.V.S.S.SOMAYAJULU, J)

5th March 2018

NOTE: Issue CC in one week
B/O
RRB