HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.1882 of 2016

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India questioning the order dated 3.3.2016 in I.A.No.1086 of 2015 in O.S. No.96 of 2012 on the file of Senior Civil Judge, Puttur, Chittoor District.

2. The learned Senior Civil Judge, in an application (I.A. No.1086 of 2015) filed under Order VII Rule 11 of Civil Procedure Code, 1908 (for short, 'C.P.C.') by the revision petitioners/defendants requesting the Court to reject the plaint for want of jurisdiction as contemplated by the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act, 2002'), refusing to grant the relief, dismissed the application. Hence, the petitioners/defendants preferred the present Civil Revision Petition.

3. Heard Sri P. Shiv Kumar, learned counsel for the petitioners, and Sri P. Ganga Rami Reddy, learned counsel for the respondent/plaintiff.

4. The Court below referring to the submissions made before it attempted to examine the purport of Section 34 of SARFAESI Act, 2002, in the light of Section 31, more particularly, clause (e) of Section 31 of SARFAESI Act, 2002, holding that clause

(e) of Section 31 acts as a rider to Section 34, as the provisions of the SARFAESI Act are inapplicable to any conditional sale, hire purchase or lease or any other contract, in which no security interest has been created, arrived at the opinion that *prima facie* it excludes lease, in which, no security interest has been created and thereby rejected the request dismissing the application.

5. The learned trial Court in fact construed that the petitioners since are lesssees and the respondent/plaintiff being the lessor who sought the relief of ejection and recovery of arrears of rent, relies on clause (e) of Section 31 of SARFAESI Act and observed as indicated in the above.

6. Learned counsel for the revision petitioners would submit that the respondent has created security interest over the property by deposit of title deeds and even before the said proceedings were initiated the revision petitioners invoked the provisions of SARFAESI Act by issuing notice under Section 13 (2), and, therefore, the suit proceedings are clearly barred by law.

7. Learned counsel for the respondent/plaintiff, *per contra*, would submit that the suit is for the relief of ejection and for recovery of arrears of rent from the petitioners herein, and, therefore, the bar under Section 34 of SARFAESI Act, 2002, would not attract.

8. Now, the short point that arises for consideration is, whether the present fact situation attracts the bar under Section 34 of

SARFAESI Act or exempted? or, whether the said bar is inapplicable in view of the relief claimed under Section 31 (e) of SARFAESI Act?

9. A few facts are relevant to appreciate the submissions made by the learned counsel on either side. The revision petitioners' stand is that the respondent/plaintiff availed a loan of Rs.5,00,000/- under SOD loan account No.567675865 in the third defendant branch by executing necessary documents and acknowledgment of deposit of title deeds and it stood undischarged. Therefore, the petitioners resorted to recovery of loan amount by initiating proceedings under the provisions of SARFAESI Act and the notice under Section 13 (2) was issued on 25.1.2012 demanding the respondent/plaintiff to repay the loan amount which took place even prior to presentation of the plaint. The said process was followed by issuance of possession notice under Section 8 (1) of Appendix-VI by virtue of provisions conferred under Section 13 (12) read with Rules 8 and 9 of Security Interest (Enforcement) Act Rules, 2002, through the authorized officer empowering to recover loan amount and after observing all necessary formalities, the authorized officer has taken possession of the suit schedule property in view of notice issued under Section 8 (1) of SARFAESI Act, dated 8.2.2013 in exercise of the powers conferred under Section 13 (4) and the suit proceedings are subsequent to the proceedings initiated under SARFAESI Act, and, therefore, Section 34 of SARFAESI Act bars the jurisdiction of Civil Court to entertain any suit or proceeding subsequent to issuance of proceedings under

SARFAESI Act and this fact was suppressed by the plaintiff with ulterior motive and without preferring appeal availing the remedies under Section 17 of SARFAESI Act challenged the action initiated by the petitioners' Bank and hence hit by Section 34 of SARFAESI Act.

10. The respondent's case is that Original Suit No.96 of 2012 was decreed on 31.12.2012 and E.P. No.22 of 2013 was filed and the Court ordered attachment of movable properties of the petitioners and at that time the petitioners came with an application to condone the delay in filing the petition to set aside the *ex parte* decree and thereafter, it was set aside and the suit was taken up for trial by examining P.W.1 and marking documents. When the suit was coming up for cross-examination of P.W.1 having taken number of adjournments the present application is filed. Therefore, the respondent would submit that the bar under Section 34 of the Act is not applicable and consequently falls within the ambit of clause (e) of Section 31 of SARFAESI Act, as rightly held by the learned trial Court.

11. Learned counsel for the respondent, no doubt, draws the attention to the provisions of Sections 34 and 31 (e) of SARFAESI Act, but the respondent/plaintiff has not chosen to controvert the allegation of the petitioners that the proceedings under the provisions of SARFAESI Act have been initiated prior to filing of the suit.

12. In such an event, certainly, the bar under Section 34 of SARFAESI Act operates and the respondent cannot take shelter under Section 31 (e). This accounts for one of vital circumstance, which favours the revision petitioners and disfavours the respondent.

13. Second circumstance that requires advertence is the respondent/plaintiff has not referred to initiation of proceedings by the revision petitioners in his plaint. When once notice under Section 13 (2) of SARFAESI Act has been issued by the petitioners' Bank and the respondent/plaintiff not disputed creation of equitable mortgage by deposit of title deeds by signing memo of creation of equitable mortgage, certainly, asset becomes secured asset and the Bank is competent to proceed under the provisions of SARFAESI Act to recover the loan. The deliberate suppression of the material fact by the respondent gives irresistible inference that only to wriggle himself out of liability to repay the loan contracted from the petitioners' bank, the plaintiff did not disclose true facts.

14. When there is express bar enacted by the provisions of Section 34 of SARFAESI Act in the circumstances mentioned above, the Court below just resting on clause (e) of Section 31 of SARFAESI Act cannot misinterpret the purport of Section 34. Thus, there is not only material irregularity but also illegality that crept in the order under challenge, which is liable to be set aside.

15. Accordingly, the order passed by the Court below in I.A. No.1086 of 2015 in O.S. No.96 of 2012, dated, 3.3.2016 is set aside and the relief sought for by the petitioners in I.A. No.1086 of 2015 filed under Order VII Rule 11 of C.P.C. is allowed. Consequently, the plaint is rejected.

Accordingly, the present Civil Revision Petition is allowed. The parties shall bear their own costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 18.04.2018
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