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

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI

<u>+ WRIT PETITION No.41352 OF 2018</u>

% Date:16.11.2018

Between:

M/s. Venkata Sai Paper Plates Industries,
Rep. by its proprietor Sri Reddypogula Thirumalesh and others.
… Petitioners

v.

$ Indian Overseas Bank, Nandyal Branch,
Kurnool District, Rep. by its Authorized Officer
.. Respondents

! For Petitioners : M/s. Gangishetty Srinivas

^ For Respondent : Mr. Shaik Jeelani Basha

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.41352 OF 2018

ORDER: ***(Per V. Ramasubramanian, J)***

Challenging a possession notice issued under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitisation Act') and the order passed by the Chief Judicial Magistrate, Kurnool, under Section 14 of the Securitisation Act, the borrower and guarantors have together come up with the above writ petition.

2. Heard Mr. G. Srinivas, learned counsel for the petitioner.

3. The main grounds of attack to the possession notice under Section 13 (4) of the Securitisation Act and the order passed by the Chief Judicial Magistrate under Section 14 of the Securitisation Act are (1) that admittedly, no demand notice under Section 13 (2) of the Securitisation Act was served on the petitioners 2 to 7, even as per the admission made by the Authorized Officer of the Bank in the affidavit filed before the Chief Judicial Magistrate and (2) that the Chief Judicial Magistrate passed an order beyond 30 days of the date of filing of the application, but the records got tampered with.

4. Insofar as the first contention is concerned, the claim of the petitioner is that if without serving a demand notice under Section 13 (2) of the Act and without providing an opportunity to the petitioners

2 to 7 to give a reply, the possession of the property is taken, the same is in violation of the principles of natural justice and also in violation of the constitutional right to property guaranteed under Article 300(A) of the Constitution of India. The right to property has also been recognized by the Supreme Court to be a human right apart from being a constitutional right.

5. Therefore, on the ground that the order of the Chief Judicial Magistrate is in violation of the principles of natural justice, the learned counsel contended that the petitioners are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

6. It is true that the availability of alternative remedy does not denude this Court of the power to issue a writ under Article 226 of the Constitution of India. In cases where there is a violation of principles of natural justice and in cases where there is inherent lack of jurisdiction, this Court will certainly step in. Asking parties to avail alternative remedy, is actually a self imposed restriction. It is not a bar for maintainability of a writ petition. We have no quarrel with this preposition.

7. But, the case of the petitioners, if it is true, is not merely a case of violation of principles of natural justice, but a case of total infringement of the provisions of the Securitisation Act. The right guaranteed to the borrowers under the Securitisation Act, *vis-a-vis* the powers conferred upon the Authorized Officer, are actually matters that can very well be adjudicated by the Debts Recovery Tribunal. It

is not a question of our refusing to exercise jurisdiction because of our lack of jurisdiction. But, it is a question of the effectiveness of the alternative remedy available to the petitioners. If what is contended by the petitioners is true that notices under Sections 13 (2) of the Securitisation Act were not served, it is a matter that the Debts Recovery Tribunal is certainly entitled to look into. Therefore, the best course of action open to the petitioners is to go before the Debts Recovery Tribunal.

8. Coming to the second contention, the learned counsel for the petitioner relies upon the rubber stamps of the Principal Senior Civil Judge's Court, one of which bears the date of 03.06.2018 and another bears a date of July 2018. Therefore, it is his contention that the impugned order passed on 21.08.2018 was beyond a period of 30 days as prescribed by the statute and that no reasons are recorded in the impugned order. It is the specific contention of the learned counsel for the petitioner that the records have been tampered with.

9. The question as to whether the records of the Chief Judicial Magistrate are tampered with or not, is a pure and simple question of fact. This can also be adjudicated by the Tribunal.

10. One more contention advanced by the learned counsel for the petitioner is that after the amendment to Section 14 of the 3Securitisation Act, the Magistrate is obliged to verify the contents of the affidavit, arrive at a satisfaction and thereafter pass an order. These two elements are absent, in as much as the Magistrate has not

applied his mind to the admitted fact that notices were not served on petitioners 2 to 7.

11. We do not know why this also should not be a matter that can be agitated before the Tribunal. Therefore, leaving it open to the petitioners to approach the Tribunal, the Writ Petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 16, 2018
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