

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* THE HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.NO.41185 of 2018

% Date: 15-11-2018

Between:

Devarasetty Anasuyamma, W/o. D. Bala Eswaraiah,
R/o. D.No.28/482C, NGO's Colony,
Nandyal, Kurnool District.

.... Petitioner

And

1. State Bank of India, Stressed Assets Recovery Branch,
Administrative Office Campus, Balaji Nagar, Siripura,
Visakhapatnam, rep. by its Authorized Officer/Chief manager.
2. M/s. Viscous Milk Products, Sy.No.161/1, Chebrol Road, Noonepalli,
Nandyal, Kurnool District.
3. E. Sudhakar Reddy S/o. Achi reddy, H.No.11-64, Palugunti Village,
Racherla Mandal, Prakasam District.
4. Devarasetty Karthik Sekhar S/o. Bala Eswariah, H.No.28/848/C,
N.G.Os Colony, Nandyal, Kurnool District.
5. Shaik Mahaboob Basha S/o. Abbasmiya, R/o. H.No.8-76, Poluru
Village, Nandyal, Kurnool District.
6. Shaik Khaleel S/o. Ibrahim, H.No.26/P29/2, Viswasapuram, Behind
LIC Office, Nandyal, Kurnool.
7. Boilla Ramana Reddy, S/o. B. Rosi Reddy, Podili Konda Palle
Village, Giddalur Mandal, Prakasam District.

... Respondents

! Counsel for the Petitioner : Mr. P. Durga Prasad

^ Counsel for Respondents : Mr. B.S. Prasad

< GI ST:

> HEAD NOTE:

? Cases referred

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

WRIT PETITION No.41185 of 2018

ORDER: (Per VRS,J.)

Challenging an order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, 2002, the petitioner, who is a guarantor has come up with the above writ petition.

2. Heard Mr. P. Durga Prasad, learned counsel for the petitioner. Mr. B.S. Prasad, learned Standing Counsel takes notice for the respondent-Bank.

3. This is the fourth writ petition in succession. This is apart from the fact that an appeal under Section 17 of the SARFAESI Act, 2002 is still pending before the Tribunal. The past history of the litigation was captured in brief in an order passed by this very same bench on 16.04.2018 in the third writ petition filed by the petitioner, viz., W.P.No.12418 of 2018. Therefore, we are saved of the botheration of repeating the facts, since it is suffice to extract the facts from the said order. The facts as revealed from the said order are extracted as follows:

“The demand notice in this case was issued on 02.11.2015. Possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short “the SARFAESI Act”) was issued on 27.01.2016 and published on 29.01.2016.

Challenging the possession notice, the petitioner came up with a writ petition in W.P.No.5675 of 2016. This writ petition was disposed of giving some breather to the petitioner till other items of properties are sold.

Thereafter, the bank went before the Chief Judicial Magistrate under Section 14 of the SARFAESI Act and obtained an order. The said order dated 31.08.2016 became the subject matter of challenge in W.P.No.33251 of 2016. The said writ petition was disposed of by this Court by an order dated 29.09.2016, recording an undertaking from the bank that the petitioner will not be dispossessed unless and until the mortgaged property belonging to the petitioner was sold after following the procedure prescribed in the order of this Court in W.P.No.5675 of 2016.

Thereafter, auction notices were issued which became the subject matter of challenge before the Debts Recovery Tribunal in S.A.No.92 of 2018. In the appeal the petitioner again sought interim orders. The Debts Recovery Tribunal ordered notice in the interlocutory applications. But in the meantime the bank sold the property, issued sale certificate and also confirmed the same.

Therefore, contending that before the disposal of the interlocutory applications by the Debts Recovery Tribunal the bank should not have proceeded further, the petitioner has come up with the above writ petition.

But the facts narrated above would show that on two writ petitions, she was granted some reprieve with certain directions. These directions have been complied with by the bank. Therefore, what the petitioner could not secure in the earlier rounds cannot be granted in this round. The petitioner should work out her remedies in the appeal filed before the Debts Recovery Tribunal.

4. Today, the petitioner has come up with the above writ petition against the order passed by the Chief Judicial Magistrate. As we have pointed out in our previous order, the attempt of the Bank to take possession in the year 2015 has fructified only after three years, i.e., in the year 2018. Therefore, we do not wish to exercise the discretion of jurisdiction in favour of the writ petitioner, especially when the appeal is pending before the Tribunal. We are actually resisting our temptation to record the true factual and legal position as it may prejudice the case of the petitioner. Therefore, the writ petition is dismissed leaving it open to the petitioner to workout her remedies in the appeal pending before the Tribunal. The Tribunal may endeavour to dispose of the appeal within two months. There shall be no order as to costs.

5. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

15th November, 2018
Js.

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

WRIT PETITION No.41185 of 2018



15th November, 2018

Js.