

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.34693 of 2017

ORDER: (per SK,J)

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

'For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Honourable Court may be pleased to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the respondent bank in invoking and proceeding with the coercive action under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 against the secured assets of the petitioner i.e. lands admeasuring Ac. 2-04 guntas (2 different parcels of land each admeasuring Ac.1-02 guntas) in Sy.Nos.175/A, 175/B, 175/C, 175/D, 175/E, 176/A1, 172/A2, 176/A3, 176/A4, 176/A5, 176/A6, 176/B, 177/A, 177/A, 181, 181/A1, 181/D, 182, 182/A1, 182/B, 183/A1, 183/A2, 184/A-1, 184/B and 184/4 of Nidigonda Village, Raghunathpally Mandal, Warangal District, presently Jangaon District for the realization of loan under Agricultural Term Loan under Indirect Finance to Agriculture is arbitrary *ultra vires* and violative of Section 31(i) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and consequently restrain the respondent from proceeding any further against the secured assets of the petitioner and grant such other relief as it deem fit and proper in the circumstances of the case.'

Smt.V.Dyumani, learned counsel for the Andhra Bank, would point out that challenge by the petitioner is essentially to the demand notice issued by the bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). She would further state that the petitioner did not even choose to make any representation or file her objections in response to the aforestated demand notice.

In the light of the law laid down by the Supreme Court in Punjab National Bank v. Imperial Gift House¹ and Devi Ispat Limited v. State Bank of India², a writ petition would ordinarily not lie against a demand notice under Section 13(2) of the SARFAESI Act.

Though the petitioner has raised an issue as to the applicability of Section 31(i) of the SARFAESI Act, we are of the opinion that the said issue ought to have been raised by her by way of a representation or an objection petition in response to the demand notice. Otherwise, she can do so before the appropriate forum as and when cause of action arises.

Reserving liberty to the petitioner to do so, the writ petition is dismissed leaving all issues open.

Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.



SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:12.02.2018

GJ

¹ (2013) 14 SCC 622

² (2014) 5 SCC 762