

* 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.40005 of 2017

% Date: 11-04-2018

Between:

m/S. g.n. International, Rep. by its Proprietor,
Sri Girish Naidu, S/o. Late Shanta Ram Naidu,
H.No.6-1-344/1, Walkers' Town,
Padma Rao Nagar, Secunderabad.

.... Petitioner

And

The Agrasen Cooperative Urban Bank Limited,
Rep. by its Authorised Officer, Mr. P. V. Sarma,
S/o. P. Krishna Murthy, Office at H.No.15-2-391/392/1,
Siddiamber Bazar, Hyderabad.

... Respondent

! Counsel for the Petitioner : Mr. G. Suresh Goud

^ Counsel for Respondents : Mr. Rupendra Mahendra

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? Cases referred

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

WRIT PETITION No.40005 of 2017

ORDER: (Per VRS,J.)

Challenging the order passed by the Chief Metropolitan Magistrate under Section 14 of the SARFAECI Act, 2002, the petitioner has come up with the above writ petition.

2. Heard Mr. G. Suresh Goud, learned counsel for the petitioner and Mr. Rupendra Mahendra learned counsel appearing for the respondent-Bank.

3. The petitioner challenges the order of the Chief Metropolitan Magistrate on the following grounds, viz., -

- a) that he never borrowed any money and never mortgaged any property;
- b) on this ground he has already lodged a criminal complaint against the officers of the respondent-bank;
- c) that the application under Section 14 was not accompanied by the affidavit of the Authorized Officer, as required by the statutory prescription; and
- d) that despite the petitioner having objected to the demand notice under Section 13 (2), the respondent-Bank mislead the Chief Metropolitan Magistrate as though no objections were filed and the Chief Metropolitan Magistrate also proceeded to pass an order on the basis that the petitioner did not oppose the notice under Section 13(2).

4. We have carefully considered the above submissions.

5. Insofar as the denial of the availment of the loan and the registration of a police complaint by the petitioner are concerned they are not matters which this Court can go into in a writ petition under Article 226. Therefore, we do not take note of the same.

6. Insofar as the statutory requirement to file an affidavit of the Authorized Officer is concerned, the respondent-bank has come up with a vacate stay petition along with certain enclosures. In the list of documents furnished along with the vacate stay petition, the respondent-bank has filed a copy of the affidavit filed by the Authorized Officer of the Bank. It is the contention of the respondent-Bank that originally the Authorized Officer filed the application under Section 14 in a particular format. This application, according to the learned counsel for the Bank, was returned by the Court on the ground that it was not in the prescribed format. Therefore, the learned counsel for the Bank submits that the affidavit of the Authorized Officer was filed after the application was returned by the Chief Metropolitan Magistrate. Therefore, it is the contention of the learned counsel for the respondent-Bank that there was no violation of the statutory prescription.

7. But it is contended by the learned counsel for the petitioner that in the impugned order of the Chief Metropolitan Magistrate, there is no reference to the additional affidavit filed by the Bank before the Chief Metropolitan Magistrate. On the contrary, the impugned order proceeds on the basis as though the petitioner did not oppose the demand notice under Section 13(2). Therefore, it is the contention of the learned counsel for the petitioner that the affidavit of the Authorized Officer could not have been filed at all.

8. But the contention of the learned counsel for the petitioner is falsified by a certified copy of the affidavit that was filed by the Authorized Officer on 27.10.2017. The learned counsel for the Bank produced a copy of the said affidavit certified by the Chief Metropolitan Magistrate Court. This certified copy shows that an affidavit was filed by the Authorized Officer on 27.10.2017. Therefore, it is not possible to accept the contention that no affidavit was filed.

9. Let us assume for a minute that the additional affidavit was not filed. Even then it is seen from the application admittedly filed by the Bank, which forms part of the material papers filed by the petitioner himself, that the same was actually an affidavit of the Authorized Officer. Instead of narration in descriptive manner the affidavit contained the facts in a tabular column. All the ingredients of the affidavit are found in the original affidavit admittedly filed by the Bank. Therefore, even if we reject the subsequent affidavit said to have been filed by the Bank, the original affidavit itself was suffice. Hence the third contention of the learned counsel for the petitioner cannot be sustained.

10. The 4th contention revolves around the finding recorded by the Chief Metropolitan Magistrate in the impugned order as though the petitioner did not oppose the demand made under Section 13(2). It is a matter of record and a matter of fact that the petitioner did oppose the notice under Section 13(2). It is also on record that the objections to the demand notice issued under Section 13(2) were overruled in the form of a letter addressed to the learned counsel for the petitioner. Therefore, there has been a compliance of the mandatory requirement under Section 13(3A) of the Act.

11. Interestingly, after the consideration of the objections of the petitioner to the demand notice under Section 13(2) and after passing an order under Section 13(3A), the Bank issued a possession notice on 16.06.2017. We do not know whether the petitioner has challenged the possession notice or accepted the same. Because of his resistance to the attempt of the bank to takeover physical possession, the bank was compelled to go before the Chief Metropolitan Magistrate under Section 14. Therefore, the statement recorded in the impugned order that the petitioner did not oppose the demand notice under Section 13(2) will not vitiate the order passed under Section 14. Hence the fourth contention of the petitioner cannot also be sustained. Therefore, the writ petition is dismissed. There shall be no order as to costs.

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

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

11th April, 2018
Js.

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

WRIT PETITION No.40005 of 2017



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