

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.10878 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by an order passed by the Debts Recovery Tribunal refusing to reject an appeal filed by certain third parties under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), the State Bank of India has come up with the above writ petition.

2. Heard Mr. A. Satyanarayana, learned counsel for the petitioner.

3. Aggrieved by the measures taken by the petitioner – bank under Section 13(4) of the Act, the respondents 1 to 3 herein filed an appeal in SA.No.268 of 2017, claiming that they are third parties and that they are owners of the properties and that, therefore, the e-auction sale notice issued by the bank should be set aside. After notice, the petitioner – bank filed an application in IA.No.2704 of 2018 for rejection of the appeal outright on the ground that the title dispute cannot be decided by the tribunal and that, therefore, an appeal filed under Section 17 of the Act raising a title dispute cannot be entertained by the tribunal. This application was rejected by the tribunal, on the basis of two judgments of the Supreme Court viz. *JAGADISH SINGH v. HEERALAL* [(2014) 1 SCC 479] and *SREE ANANDHAKUMAR MILLS LTD. v. INDIAN OVERSEAS BANK* decided on 03.05.2018. Aggrieved by the said dismissal, the bank has come up with the above writ petition.

4. What the petitioner – bank is contending, is actually in a grey area. In cases where third parties challenge the proceedings initiated under Section 13(4) of the Act before this Court, by way of a writ petition, the banks object to the maintainability of the writ petition on the ground that ‘any person’ aggrieved by any measure taken by the bank is entitled to file an appeal under Section 17 of the Act. Such contentions are based upon the very same judgments of the Supreme Court. Therefore, today the bank cannot say that the expression ‘any person’ appearing in Section 17 of the Act does not apply to third parties.

5. In any case, the bank cannot ask the tribunal to reject an appeal under Section 17 of the Act, as though there is a provision under Order 7 Rule 11 of the Civil Procedure Code. If an appeal under Section 17 of the Act is not maintainable, the same can be raised in defence and the same can be considered along with all other points. There is no question of rejection of appeal, as though it is on par with rejection of a plaint under Order 7 Rule 11 CPC.

Therefore, the writ petition is dismissed. However, this will not preclude the bank from continuing to raise the objection relating to maintainability at the time of final disposal of the SA. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J