THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION NOS.5685, 8240 AND 11618 OF 2019

COMMON ORDER
(*Per Sri Justice Sanjay Kumar)*

1. Parties and issues being common, these three cases are amenable to disposal by way of this conjoined order.

2. W.P.No.5685 of 2019 was filed by Prince Corrugated Packaging, Hyderabad, a partnership firm, and J.Ravi Kumar, its Managing Partner. Their challenge was to the order dated 05.03.2019 passed by the Debts Recovery Tribunal-I, Hyderabad (*for brevity*, 'the Tribunal'), in S.A.No.457 of 2015. A consequential direction was sought to stay all further proceedings pursuant to the said order, including taking over of physical possession of Plot Nos.148 and 149 part, admeasuring 300 square yards (owned by M.Anantha Rao); Plot Nos.157 (southern part) and 160, admeasuring 300 square yards (owned by M.Kantha Rao); and Plot Nos.156 (southern part) and 157 (northern part), admeasuring 200 square yards (owned by M.Raja Ratnam) in Survey N0.118 of Medicapally Village, Ghatkesar Mandal, Ranga Reddy District. No interim orders were granted in this writ petition as I.A.No.1 of 2019, seeking interim relief on par with the consequential relief sought in the writ petition, was dismissed on 01.04.2019.

3. W.P.No.8240 of 2019 was filed by M.Raja Ratnam, M.Anantha Rao and M.Kantha Rao, the owners of the subject plots which find mention in the prayer in W.P.No.5685 of 2019, assailing the very same order dated 05.03.2019 passed in S.A.No.457 of 2015. They also sought the very same consequential relief in relation to the subject plots. No interim orders were granted in this writ petition also.

4. W.P.No.11618 of 2019 was filed by Prince Corrugated Packaging, Hyderabad, along with J.Ravi Kumar, its Managing Partner, and M.Raja Ratnam, M.Anantha Rao and M.Kantha Rao, the petitioners in W.P.No.8240 of 2019. The prayer in this writ petition was to direct the respondents therein not to dispossess the petitioners from the subject plots pending final adjudication of W.P.Nos.5685 and 8240 of 2019. This writ petition was directed to be clubbed with the two pending writ petitions but no interim relief was granted to the petitioners.

5. Heard Sri Prashanth Surepalli, learned counsel for the petitioners in these three cases, Sri V.Murali Manohar, learned counsel representing Smt. V.Dyumani, learned counsel for Andhra Bank, the secured creditor, and Sri R.Narasimha Reddy, learned counsel appearing for N.Nagamani, the auction purchaser.

6. Prince Corrugated Packaging, Hyderabad, manufactures and sells corrugated boxes. It availed cash credit facility to the tune of Rs.75,00,000/- along with a term loan of Rs.50,00,000/- from Andhra Bank. M.Anantha Rao, M.Kantha Rao and M.Raja Ratnam stood as guarantors for repayment of these loan facilities and offered the subject plots owned by them as security therefor. Default having been committed in repayment, these loan facilities were declared non-performing assets and the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'SARFAESI Act'). Having secured possession orders under Section 14 of the SARFAESI Act from the competent Magistrate, the bank brought the subject plots to sale on 10.09.2015 and N.Nagamani emerged the highest bidder. Alleging various irregularities in the measures initiated by the bank, S.A.No.457 of 2015 was filed by the firm and it's Managing Partner for the following reliefs:

‘i) to declare the measure of the possession in respect of the schedule d) property by the respondent bank through advocate commissioner’s warrant dated ….09.2015 in Crl.M.P.No. 577 of 2015 passed by the Chief Metropolitan Magistrate, Ranga Reddy District, at L.B.Nagar, consequent to the possession notice dated 17.04.2015 taken possession of the properties consequent to the alleged demand notices dated 16.01.2015 and 07.10.2014 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and the Security Interest Rules made there under as illegal, void and arbitrary in the interest of justice in respect of the property all that the residential House bearing No.10-104/18, with built up area of 914 Square Feet constructed in 108 Square Yards in Plot No.4 Part, in Survey No.94 and 95 situated at Peerzadiguda Village and Grampanchayat, Ghatkesar Mandal, Ranga Reddy District and bounded by North: Neighbours Land, South: Plot No.4 Part, East: Plot No.1, West: 20’ Wide Road by restoring the contract of loan of the applicant No.1 with the respondent No.2 bank to its original position.

ii) to declare the measure of sale dated 10.09.2015 taken by the respondent No.1 bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 consequent to the sale notice dated 04.08.2015 issued under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 consequent to the prior to sale notice dated 09.06.2015 consequent to the possession notice dated 17.04.2015 taken possession of the properties consequent to the alleged demand notices dated 16.01.2015 and 07.10.2014 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and the Security Interest Rules made there under as illegal, void and arbitrary in the interest of justice by setting aside the sale by restoring the existing contract of mortgage to its position with the respondent No.2 herein in respect of the properties i.e. schedule properties more fully described in the schedule of properties hereunder,

iii) to direct the respondent No.1 bank herein to produce all the documents relating to the proceedings initiated under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 together with the loan documents and the documents of title relating to the schedule properties.

iv) to award compensation for making illegal attempts to the extent of Rs.1,25,00,000/- (Rupees one crore twenty five lakhs only) for initiating the alleged securitization proceedings.

v) to award costs of the application

vi) to pass such other relief or reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.'

7. By order dated 05.03.2019, the Tribunal dismissed the securitization application leading to the filing of W.P.Nos.5685 and 8240 of 2019 calling the same in question. W.P.No.11618 of 2019 is only consequential, in so far as it seeks *status quo* to be maintained pending disposal of these writ petitions.

8. At the outset, it may be noticed that Prince Corrugated Packaging, Hyderabad, and J.Ravi Kumar, its Managing Partner, were the only applicants in the securitization application. They filed the said application initially against the order secured by the bank in Crl.M.P.No.577 of 2015 under Section 14 of the SARFAESI Act. However, they amended their prayer thereafter and included a challenge to the sale of the subject plots on 10.09.2015. N.Nagamani, the auction purchaser, was then impleaded as a party respondent in the securitization application. Significantly, the subject plots did not belong to either of the applicants in the securitization application. They belonged to the guarantors who offered the said plots as security for the loan facilities availed by Prince Corrugated Packaging, Hyderabad. These guarantors, viz., M.Anantha Rao, M.Kantha Rao and M.Raja Ratnam, figured as respondents 4 to 6 in the securitization application. They however chose to remain *ex parte* and did not participate in the proceedings before the Tribunal. The bank specifically raised this issue and contended that the securitization application was liable to be dismissed as neither of the applicants had *locus* to challenge the sale of the plots offered by the guarantors, who were not even interested in appearing before the Tribunal. Faced with these circumstances, the Tribunal found that the

bank had duly complied with all procedural norms while taking measures under the SARFAESI Act and had successfully brought the secured assets offered by the guarantors to sale on 10.09.2015. The Tribunal further found that the plots purchased by N.Nagamani, being Schedule B and C properties, belonged to M.Kantha Rao and M.Raja Ratnam, who did not even choose to come forward and remained *ex parte*. The Tribunal accordingly held that they had waived their rights, if any, to subject the sale to challenge. It was on this basis that the Tribunal dismissed the securitization application.

9. Be it noted that Schedules B and C in the securitization application detailed Plot Nos.157 (southern part) and 160, belonging to M.Kantha Rao, and Plot Nos.156 (southern part) and 157 (northern part), belonging to M.Raja Ratnam. Plot Nos.148 and 149 part, belonging to M.Anantha Rao, were not purchased by N.Nagamani. However, the prayers in the writ petitions include those plots also. Further, M.Anantha Rao figures as one of the petitioners in W.P.No.8240 of 2019, though there is no evidence of his plots having been sold either to N.Nagamani or to any other person.

10. We may note that Section 2(f) of the SARFAESI Act defines 'borrower' not only to mean the person who has been granted financial assistance by any bank or financial institution but also a person who has given any guarantee or created any mortgage as security for such financial assistance. Therefore, a guarantor would stand in the position of a 'borrower' under the provisions of the SARFAESI Act. That apart, Section 17 of the SARFAESI Act vests not only a 'borrower' but any person aggrieved by the measures initiated under Section 13(4) thereof with the right to challenge the same before the jurisdictional Debts Recovery Tribunal. Though the provision is widely worded and enables 'any person aggrieved' by the measures initiated under Section 13(4) to approach the jurisdictional Tribunal, the grievance

entertained by such a party would have to be demonstrated. When the actual owner of the property brought to sale is not aggrieved and does not come forward, it is not open to a third party, even if he be the principal borrower at whose behest the owner of such property offered a guarantee, to maintain a challenge under Section 17 of the SARFAESI Act. Therefore, in this statutory scheme, if the guarantors had any grievance with regard to sale of their plots which were offered by them as security for repayment of the loan by Prince Corrugated Packaging, Hyderabad, they had an independent right to approach the Tribunal under Section 17 of the SARFAESI Act. Significantly, none of them chose to do so. Further, even though they were arrayed as respondents in the securitization application filed by Prince Corrugated Packaging, Hyderabad, and its Managing Partner, they chose to remain *ex parte* and did not even assert any rights before the Tribunal, at least in the capacity of party respondents. In effect, they practically waived their right to challenge the sale of the subject plots (See GENERAL MANAGER, SRI SIDDESHWARA COOPERATIVE BANK LTD. V/s. IKBAL[1]). Even after dismissal of S.A.No.457 of 2015 specifically recording this aspect, they took no measures to independently challenge the sale by way of a separate application under Section 17 of the SARFAESI Act. Without doing so, they chose to file W.P.No.8240 of 2019 assailing the order dismissing S.A.No.457 of 2015.

11. In such circumstances, we find no error having been committed by the Tribunal in holding against the applicants in the securitization application on the issue of *locus standi*. Further, the conclusion arrived at by the Tribunal to the effect that the guarantors had waived their right, if any, to challenge the subject sale also warrants no interference.

[1] (2013) 10 SCC 83

12. W.P.Nos.5685 and 8240 of 2019, challenging the aforestated findings of the Tribunal in the impugned order dated 05.03.2019 passed in S.A.No.457 of 2015, therefore lack merit and are accordingly dismissed. In consequence, W.P.No.11618 of 2019 is also dismissed. Pending miscellaneous petitions, if any, in all three writ petitions shall also stand dismissed. In the circumstances, there shall be no order as to costs.

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SANJAY KUMAR, J

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K.LAKSHMAN, J

26th September, 2019

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