HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P.KESHAVA RAO

Writ Petition No.13329 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

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

> "…to issue an appropriate writ, order or direction more particularly one in the nature of Writ of mandamus declaring the invoking the measures of the 1st respondent under SARFAESI Act including the Demand Notice dated 01.03.2016 u/s 13(2) and Possession Notice dated 24.10.2016 in respect of secured asset i.e., residential House in Plot Nos.44 & 45, Sy.No.134, Srinivasa Nagar, Street No.3, Seetarampura Bowenpally, Secunderabad 500 011, as being illegal, erroneous, contrary to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and under SIER, 2002, and to quash the same as arbitrary, illegal, unjust, without jurisdiction and violative of the fundamental and constitutional rights guaranteed under the Constitution of India and pass such other order or orders as this Hon'ble Court deems fit and proper in the interest of justice, equity and fair play."

By order dated 17.4.2018 passed in this Writ Petition, the erstwhile High Court granted interim stay of all further proceedings pursuant to the possession notice dated 24.10.2016 issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

Perusal of the writ affidavit reflects that the main ground urged by the petitioner was that the City Financial Consumer Finance India Limited, Secunderabad, respondent No.2, the predecessor-in-interest of Kotak Mahindra bank, respondent No.1, was a Non-Banking Financial Corporation which did not have the status of a 'financial institution' as defined under Section 2(1)(m) of the SARFAESI Act and was therefore not entitled to invoke the provisions of the SARFAESI Act. Another ground was that the respondents could not proceed simultaneously under the SARFAESI Act and the Arbitration and Conciliation Act, 1996.

Both these issues stand settled against the petitioner by the decisions of the Supreme Court in Indiabulls Housing Finance Limited

Vs. Deccan Chronicle Holdings Limited[1] and M.D. Frozen Foods Exports Pvt. Ltd. Vs Hero Fincorp Ltd[2] respectively.

Though it is a fact that respondent No.2 was not a 'financial institution' within the ambit of Section 2(1)(m) of the SARFAESI Act, the fact also remains that respondent No.2 assigned the petitioner's loan account to Kotak Mahindra Bank Limited, respondent No.1, which is admittedly a 'bank' in terms of Section 2(1)(c) of the SARFAESI Act. In terms of the law laid down in Indiabulls Housing Finance Limited (1 supra), the SARFAESI Act would apply to all debts which are owing or live when the said Act became applicable. As the loan of the petitioner was assigned by respondent No.2 to respondent No.1 Bank and was live and owing, there can be no dispute that respondent No.1 bank, would have the authority to proceed under the provisions of the said Act. Further, in the light of the law laid down in M.D. Frozen Foods Exports Pvt. Ltd. (2 supra), it is settled that proceedings can be initiated simultaneously under the SARFAESI Act and the Arbitration and Conciliation Act, 1996.

In that view of the matter, we find no grounds to interfere. The Writ Petition is devoid of merit and is accordingly dismissed. Interim stay dated 17.4.2018 shall stand vacated.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE P.KESHAVA RAO

08th July, 2019
_dr_

[1] (2018) 14 SCC 783
[2] (2017) 16 SCC 741