HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.30403 of 2018

ORDER: *(per V. Ramasubramanian, J)*

Challenging an order of attachment passed by the Debts Recovery Tribunal in an application pending under Section 19 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993, the Managing Director of the borrower-company has come up with the above writ petition.

2. Heard Mr.M.Venkateswara Rao, learned counsel for the petitioner and Mr.P.V.Markandeyulu, learned counsel for the first respondent-bank.

3. The second respondent-company is the borrower, who has committed default in repayment. The third respondent is the sister of the petitioner and both of them are the directors of the second respondent-company. The petitioner herein also happens to be the Managing Director of the second respondent-company.

4. For the recovery of the dues from the second respondent-company, the bank has already filed an application in O.A.No.1116 of 2014 on the file of the Debts Recovery Tribunal-I, Hyderabad. Pending the said application, the bank also moved an application for attachment before judgment of the property belonging to the petitioner

herein. The Tribunal ordered attachment, forcing the petitioner to come up with the above writ petition.

5. The impugned order of attachment is challenged primarily on two grounds, viz., (a) that the parameters of Order 38 Rule 5 of C.P.C. read with Section 19 (13) of the Recovery of Debts due to the Banks and Financial Institutions Act were not satisfied and (b) that the property sought to be attached is already under mortgage with ICICI bank.

6. We are carefully considered the above submissions.

7. Insofar as the first contention is concerned, it is seen from the affidavit filed by the bank in support of their application for attachment before judgment that the total amount due and repayable by the second respondent-company as on 01.08.2014 was Rs.16,02,33,255/-. The securities of immovable properties offered by the second respondent were sold under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and only a sum of Rs.69.00 lakhs was recovered. This is as against the total dues to the extent of more than 16.00 crores.

8. Therefore, in para No.7 of the affidavit in support of the application for attachment, the bank has pleaded that the petitioner herein may alienate/transfer the property in favour of third parties to defraud the claim of the bank.

9. A look at the averments in para No.7 of the affidavit would show that it is not as though the bank has proceeded blind fold to seek attachment of the properties of the Managing Director. The bank has first exhausted the option of bringing the secured assets to sale. The bank could recover, under the Securitisation and Reconstruction of Financial and Enforcement of Security Interest Act, 2002, only a sum of Rs.69.00 lakhs as against the dues of more than Rs.16.00 crores. Therefore, the apprehension on the part of the bank and their inability to recover the amount, justified the order of the Tribunal. Hence, the first objection of the petitioner is liable to be rejected.

10. Insofar as the second objection is concerned, the petitioner need not actually worry about the same. If a property is already under mortgage, a person getting attachment of the very same property will stand in the Queue, only behind the person who holds a mortgage. It is only after the claim of the mortgagee is satisfied that the order of attachment will have relevance, with respect to the balance amount. Therefore, the second objection also cannot be accepted.

11. This can be demonstrated with a hypothetical example. In case the petitioner redeems the mortgage, then the whole property will be available for the first respondent-bank, pursuant to the order of attachment. This opportunity available to the first respondent cannot be lost merely because of a mortgage subsisting. Hence, the second ground of attack to the impugned order cannot also be sustained.

Therefore, the writ petition is devoid of merits and hence it is dismissed.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

February 04, 2019
gkv/Mgr