

D. Ram Reddy Vs M/s. Asset Reconstruction Company (India) Pvt. Ltd.

Court: Andhra Pradesh High Court

Date of Decision: July 11, 2016

Acts Referred: Constitution of India, 1950 - Article 226

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 34

Citation: (2016) 6 ALT 533 : (2017) 1 AndhLD 170

Hon'ble Judges: Sri P.V. Sanjay Kumar and Dr. B. Siva Sankara Rao, JJ.

Bench: Division Bench

Advocate: Sri Srinivasa Rao Madiraju, Advocate, for the Petitioner; Sri P. Sriharsha Reddy, Advocate, for the Respondent No. 1; None Appeared, for the Respondent Nos. 2, 3 and 5; Sri Rajashekar Thallapally, Advocate, for the Respondent No. 4

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sri Sanjay Kumar, J. - Cause for grievance in this writ petition was the order dated 05.09.2015 in Crl. M.P. No. 560 of 2015 passed by the

learned Chief Metropolitan Magistrate, Ranga Reddy District at L.B. Nagar, in exercise of the power conferred by Section 14 of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, "the SARFAESI Act"). A declaration was

also sought that the Asset Reconstruction Company (India) Private Limited, Mumbai, the 1st respondent, should not bring to sale the land

admeasuring Ac.2.00 guntas situated in Sy. Nos. 595 and 596 of Pedda Amberpet Village, Hayathnagar Mandal, Ranga Reddy District, belonging

to the petitioner and that he should not be dispossessed thereof pursuant to the order dated 05.09.2015 in Crl. M.P. No. 560 of 2015.

2. By interim order dated 21.03.2016, this Court directed status quo obtaining as on that date to be maintained with regard to the subject property

for a period of eight weeks taking note of the petitioner's case that he was a third party to the loan transaction, if any, between respondents 3 to 5

and any bank and that he had never offered his property as security for any loan transaction. This Court further directed that in the event the

property in question had been put to sale, the sale should not be confirmed but other formalities, including acceptance of 25% of the bid amount,

may be undertaken. The interim order dated 21.03.2016 was extended thereafter from time to time and is in operation as on date.

3. The petitioner claims that his family owned Ac.10.15 guntas in Sy. No. 595 and Ac.11.14 guntas in Sy. No. 596 of Pedda Amberpet Village.

Out of these extents, an extent of Ac.2.00 guntas in Sy. No. 595 and an extent of Ac.2.02 guntas in Sy. No. 596 of Pedda Amberpet Village

were stated to have been sold to one Annapurna by his grandfather and other family members. The petitioner further states that, after selling

Ac.16.29 $\frac{1}{2}$ guntas in Sy.Nos. 595 and 596 of Pedda Amberpet Village, his branch of the family was left with an extent of Ac.4.19 $\frac{1}{2}$ guntas.

Pursuant to the will dated 13.06.2013 executed by his father, the petitioner claimed that he became the owner and possessor of Ac.1.19 $\frac{1}{2}$

guntas in Sy. No. 595 and Ac.2.36 guntas in Sy. No. 596 of Pedda Amberpet Village. His possession was stated to have been recognised by the

revenue authorities and pattadar pass books and title deeds were issued to him in relation to these lands.

4. The petitioner asserts that Annapurna, who had bought Ac.4.02 guntas of land in Sy.Nos. 595 and 596 of Pedda Amberpet Village, alienated

more than the extent purchased by her, aggregating to Ac.6.27 guntas, and the registered sale deed bearing Document No. 8124 of 2005 was

brought into existence, where under Annapurna was said to have sold an extent of Ac.2.00 guntas to her own daughter, Uma Devi. The petitioner

further asserts that on 26.02.2015, representatives of the 1st respondent company came to his land and put up a board proclaiming that the extent

of Ac.2.00 guntas in Sy.Nos.595 and 596 of Pedda Amberpet Village would be put to auction on 17.03.2016. He claims that it was then that he

came to know that his land had been illegally offered as security in relation to a loan given to M/s.Nakshatra Organics Private Limited, the 3rd

respondent, and that an order had been passed by the Chief Metropolitan Magistrate, Ranga Reddy at L.B. Nagar, under Section 14 of the

SARFAESI Act in relation thereto.

5. The 1st respondent company filed a counter-affidavit stating that the IDBI bank had loaned a sum of Rs. 9,85,00,000/- to the 3rd respondent

company in the year 2009 and Uma Devi, a guarantor for the said loan, had offered a secured interest in the land admeasuring Ac.2.00 guntas in

Sy. Nos. 595 and 596 of Pedda Amberpet Village. As the loan account of the 3rd respondent company was classified as a non-performing asset,

the bank issued demand notice dated 04.04.2012 under Section 13(2) of the SARFAESI Act for payment of a sum of Rs. 11,55,68,131/- with

further interest. Due to non-compliance with this demand, the bank issued possession notice dated 25.10.2012 under Section 13(4) of the

SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. Under Assignment Agreement dated 30.03.2013, the

bank assigned this financial asset relating to the loan of the 3rd respondent company to the 1st respondent company. Thereupon, the 1st

respondent company approached the Chief Metropolitan Magistrate, Ranga Reddy District at L.B. Nagar, under Section 14 of the SARFAESI

Act seeking delivery of possession of the secured asset and the order dated 05.09.2015 was passed. The 1st respondent company further stated

that the vacant physical possession of the land was taken by its authorised officer on 07.11.2015 and sale notice dated 11.02.2016 was published

in the newspapers on 12.02.2016 fixing the date of the auction as 17.03.2016. The auction was stated to have been conducted on 17.03.2016

and was knocked down in favour of M/s.Green Leaves Developers. A sum of Rs. 80,74,630/- was stated to have been received from the highest

bidder, being 25% of the bid amount, and at that stage the present writ petition was filed and the 1st respondent company could not confirm the

sale thereafter.

6. In the light of the afore stated factual milieu, the issue for consideration is as to whether the 1st respondent company can be permitted to

proceed against the subject property under the SARFAESI Act.

7. Section 2(1)(f) of the SARFAESI Act defines "borrower" to mean a person who has been granted financial assistance by a bank or financial

institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or

financial institution. A "secured asset" under Section 2(1)(zc) of the SARFAESI Act is defined to mean the property on which "security interest" is

created. In turn, Section 2(1)(zf) defines "security interest" to mean the right, title and interest of any kind whatsoever upon property created in

favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31.

8. The crucial question that needs to be answered presently is whether any "secured interest" was created in the subject property, whereby the 1st

respondent company, the successor-in-interest of the IDBI bank, can take steps in relation thereto in the status of a "secured creditor" under the

SARFAESI Act .

9. According to the petitioner, he was neither a borrower nor a guarantor in respect of any loan given by the IDBI bank to the 3rd respondent

company. He asserts that a document was fabricated in favour of Uma Devi, though her vendor, her own mother, had no land left to sell to her and

that this fabricated document was the foundation for the guarantee given by Uma Devi for the said loan.

10. When the very status of the subject "secured asset" is in doubt and the applicability of the provisions of the SARFAESI Act is open to

question, the statutory prohibition posited under Section 34 of the SARFAESI Act, ousting the jurisdiction of the civil Court, would not be

attracted. In this regard, it is relevant to note that in *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311, the Supreme Court

observed that the prohibition under Section 34 of the SARFAESI Act covers matters which can be taken cognizance of by the Debts Recovery

Tribunal but to a very limited extent, jurisdiction of the civil Court can still be invoked. In the event a question arises as to whether a guarantee

stood discharged under Sections 133 and 135 of the Indian Contract Act, 1872, then the civil Court would have jurisdiction to entertain the case

as the character of the guarantor is itself denied. By the same analogy, when the status of the party being a "borrower" and the property being a

"secured asset" is questioned, this Court is of the opinion that the bar under Section 34 of the SARFAESI Act would not apply at all. A third party

to a loan transaction who is actually in possession would be left with no remedy if the jurisdiction of the civil Court is held to be barred and no

separate remedy is provided to him under the SARFAESI Act, as Section 17 thereof cannot be invoked by him.

11. We are therefore of the considered opinion that Section 34 of the SARFAESI Act would have no application to a fact situation as obtaining in

the present case and it would be open to the petitioner to approach the competent civil Court for adjudication of the dispute.

12. As the petitioner was protected by the interim order granted by this Court and the sale held by the 1st respondent company has not been

confirmed pursuant thereto, the petitioner shall continue to have the benefit of the said interim order for a period of six weeks from today. In the

meanwhile, it would be open to him to seek appropriate interim relief from the civil Court. We make it clear that we have not ventured into the

merits of the matter and all issues are left open for adjudication by the civil Court.

13. Subject to the above, the writ petition is dismissed leaving it open to the petitioner to approach the competent civil Court. Pending

miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.