

2017 (4) ALT 507 (D.B.)

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
P.V. SANJAY KUMAR and G. SHYAM PRASAD, JJ.
W.P.Nos. 6089 and 6426 of 2016
DECIDED ON : 04-07-2017

HEAD

NOTE

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Sections 13(2) and 13(4) — Civil Procedure Code, 1908, Order 22 Rule 6 — Decree against a dead person — An order passed against a dead person would be a nullity if the legal heir of the dead person does not waive his right to have the same declared as such, would enure to the benefit of legal heirs — The order secured by the 1st respondent bank under section 14 of the SARFAESI Act is a nullity and cannot be executed against the legal representatives of late Jalla Sattaiah as they were not made parties to the proceedings and never had an opportunity to counter the same — Writ petitions deserve to be allowed and orders passed by the Chief Metropolitan Magistrate, Hyderabad is set-aside. (Paras 13, 15 and 16)

QUOTABLE

POINT

Order against a dead person “ *An order passed against a dead person would be a nullity if the legal heir of the dead person does not waive his right to have the same declared as such, would enure to the benefit of legal heirs.*

ADVOCATES

Mr. Moddu Vijay for M/s. AEQuitasjuris Law Firm, Counsel for the Petitioner in W.P. No.6089 of 2016 and for Respondent Nos. 7 to 9 in W.P. 6426 of 2016. Mr. Siva Prasad Daddanala, Counsel for the Petitioner in W.P. 6426 of 2016. Mr. M.V.K. Viswanadham, Counsel for Respondent No.1 in both W.Ps.

CASES REFERRED

- 1 . 1963 AIR A.P. 168 - Cheladina Venkata Ram Rao Vs. Engu Narayana
- 2 . 1979 3 SCC 578 - N. Jayaram Reddi Vs. Revenue Divisional Officer and Land Acquisition Officer
- 3 . 2015 (2) ALT(CRI.)(SC) 306 - Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd
- 4 . 2016 3 SCC 762 - Vishal N. Kalsaria Vs. Bank of India

Judgment

(Per Sanjay Kumar, J.)

The petitioners in W.P.No.6426 of 2016, eight in number, claim to be the tenants in possession of the property bearing Municipal No.13-4-752, Sabzimandi, Karwan, Mehdipatnam, Hyderabad. The original owners of the said property were late Jalla Sattaiah and late Jalla Lachaiah. The petitioners claim to have obtained lease deeds from late Jalla Sattaiah and the legal heirs of late Jalla Lachaiah. They claim protection under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

2. The five petitioners in W.P.No.6089 of 2016 are the legal heirs of late Jalla Lachaiah and late Jalla Sattaiah. They claim to be co-sharers of the property in question. Petitioners 3 to 5 claim to be living in the said property along with the tenants. It is an admitted fact that late

Jalla Sattaiah was a guarantor for the loan availed by M/s. Vasavi Enterprises, Hyderabad, the 2nd respondent in both writ petitions, from Indian Overseas Bank, Hyderabad, the 1st respondent in both cases. The said loan account was classified as a non-performing asset owing to the default committed in repayment thereof. The 1st respondent bank thereupon issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), calling upon the 2nd respondent to repay the sum of Rs. 6,00,05,867/-. Failure to comply led to measures being initiated by the 1st respondent bank under Section 13(4) of the SARFAESI Act.

3. The 1st respondent bank invoked the power of the learned Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the SARFAESI Act to obtain possession of the secured asset, *vide* CrI.M.P.No.2976 of 2015. By order dated 22.01.2016 passed therein, the learned Chief Metropolitan Magistrate, Hyderabad, appointed an Advocate Commissioner to take possession of the secured asset and deliver the same to the bank. Pursuant thereto, the Advocate Commissioner issued notice dated 12.02.2016 informing the occupants of the subject property to vacate and hand over its possession to him. This led to the filing of these writ petitions.

4. The case of the petitioners in W.P.No.6089 of 2016, the legal heirs of the original owners, is that they were ignorant of the creation of the security interest over the property in question by late Jalla Sattaiah. They pointed out that the 1st respondent bank had filed O.A.No.1387 of 2014 before the Debts Recovery Tribunal, Hyderabad, under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, against Jalla Sattaiah and others and that the same was still pending. They claimed that during the pendency of the said O.A., it was not open to the 1st respondent bank to initiate measures under the SARFAESI Act. The third ground urged by them was that no notice had been issued to them individually in CrI.M.P. No.2976 of 2015 and that the order passed therein by the learned Chief Metropolitan Magistrate, Hyderabad, was against a dead person, *viz.*, Jalla Sattaiah, who had expired on 12.07.2015.

5. The petitioners in W.P.No.6426 of 2016 claimed that their tenancy rights were up to the year 2018 and that they could not be dispossessed from the property in question in the meanwhile. Copies of the unregistered lease deeds executed during the years 2012 to 2014 in favour of the eight petitioners were placed on record.

6. By interim order dated 29.02.2016 passed in W.P.No.6426 of 2016, this Court granted stay of delivery of possession by the petitioners therein subject to their depositing each month's rent with the 1st respondent bank on or before the 10th of the succeeding month, commencing from the month of February, 2016.

7. In its counter filed in W.P.No.6089 of 2016, the 1st respondent bank, speaking through its Assistant General Manager, Asset Recovery Management Branch, Regional Office, Hyderabad, stated as under: Late Jalla Sattaiah executed a guarantee deed on 25.03.2010 in favour of the bank guaranteeing repayment of the loan facility availed by the 2nd respondent in the writ petition. The account was classified as a non-performing asset owing to the default in the repayment of this loan. The dues outstanding as against this loan account as on 18.10.2013 stood at Rs. 6,00,05,867/-, apart from the interest to be paid thereon. Reference was made to the litigation initiated by late Jalla Sattaiah, *vide* W.P.No.3841 of 2014 filed before this Court, assailing the measures initiated by the bank under Section 13(4) of the SARFAESI Act. The bank pointed out that his claim therein was that the properties of the borrower should first be sold before the bank took recourse to sale of the guarantor's properties. This writ petition was dismissed on 25.06.2015. The bank pointed out that in the affidavit filed in support of that case, it was not claimed that the subject property was a joint family property and asserted that the averment to that effect in the present writ petition was

factually incorrect and had been concocted for the purposes of this case. 8. In the counter-affidavit filed in W.P.No.6426 of 2016, the bank alleged that the unregistered lease deeds under which the petitioners therein claimed tenancy rights were suspect as the stamp papers on which they were scribed were not even purchased in their names. The bank pointed out that the unregistered lease deeds were contrary to the requirements of the Transfer of Property Act, 1882. According to the bank, the signatures of late Jalla Sattaiah on the lease deeds differed from his signatures in the documents filed by the petitioners in W.P.No.6089 of 2016. The bank therefore contended that the lease deeds were concocted for the purpose of the case and that the writ petition deserved to be dismissed as the petitioners had approached the Court with unclean hands. 9. Heard Sri Muddu Vijay, learned counsel representing AEQUITASjuris Law Firm appearing for the petitioners, and Sri M.V.K. Viswanadham, learned counsel for the 1st respondent bank.

10. Sri Muddu Vijay, learned counsel, would concentrate on protection of tenancy rights in W.P.No.6089 of 2016 relying on the law laid down by the Supreme Court in *Vishal N. Kalsaria v. Bank of India* (1) (2016) 3 SCC 762. He would contend that the factum of the lease deeds being unregistered would have no significance in the light of this decision and that the earlier decision of the Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.* (2) 2015 (2) ALT (CrI.) 306 (SC) = (2014) 6 SCC 1 would not apply. Sri M.V.K. Viswanadham, learned counsel, would argue to the contrary.

11. We are however of the opinion that this issue does not require to be addressed in the present case as the matter is amenable to disposal on a different ground.

12. The bank admits that late Jalla Sattaiah alone created a security interest in the subject property by standing as a guarantor for the loan availed by the 2nd respondent from the bank. It is an admitted fact that Jalla Sattaiah died on 12.07.2015. The order dated 22.01.2016 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.2976 of 2015, in exercise of power under Section 14 of the SARFAESI Act, was therefore long after the death of Jalla Sattaiah, who was named as the 4th respondent therein. Perusal of the said order reflects that none of the respondents therein were even put on notice prior to the passing thereof. The 1st respondent bank contends that it was for the legal heirs of Jalla Sattaiah to inform it of his demise. This feeble plea merits no consideration as they had no opportunity to do so as Jalla Sattaiah was never put on notice in the aforesaid CrI.M.P. In effect, the order dated 22.01.2016 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in CrI.P.M.No.2976 of 2015 was against a dead person.

13. As long back as in the year 1963, a Full Bench of this Court in *Cheladina Venkata Ram Rao v. Engu Narayana* (3) AIR 1963 AP 168 observed that the very first principle that should be kept in mind is that a Court can pass no decree for or against a dead person, unless the law otherwise provides, such as for instance, Order 22 Rule 6 CPC, wherein it is provided that if either of the party dies between the conclusion of the hearing and the pronouncing of the judgment, whether the cause of action survives or not and notwithstanding anything contained in any rules specified therein, a judgment can be pronounced and shall have the same force and effect as if it had been pronounced before the death
took place.

14. Later, in *N. Jayaram Reddi v. Revenue Divisional Officer and Land Acquisition Officer* (4) (1979) 3 SCC 578 = AIR 1979 SC 1393, the Supreme Court observed that a decree against a dead person is to be treated as a nullity because it cannot be allowed to operate against his legal representative when he was never brought on record to defend the case. It was held that it is a matter entirely at the discretion of the legal representative of the deceased respondent against whom a decree has been passed after his death to decide

whether he should raise the question that the decree is a nullity or to abandon that obviously technical objection and fight the case on merits.

15. The aforesaid settled legal position that an order passed against a dead person would be a nullity if the legal heir of the dead person does not waive his right to have the same declared as such, would enure to the benefit of the legal heirs of late Jalla Sattaiah in the present case. In the affidavit filed in support of W.P.No.6089 of 2016, they specifically stated that they were not bound by the order dated 22.01.2016 passed in CrI.M.P.No.2976 of 2015 by the learned Chief Metropolitan Magistrate, Hyderabad, as it was passed against a dead person, viz., their deceased father, Jalla Sattaiah.

16. In that view of the matter, the order secured by the 1st respondent bank under Section 14 of the SARFAESI Act is a nullity and cannot be executed against the legal representatives of late Jalla Sattaiah as they were not made parties to the proceedings and never had an opportunity to counter the same. The writ petitions therefore deserve to be allowed on this short ground and are accordingly allowed. Order dated 22.01.2016 in CrI.M.P.No.2976 of 2015 passed by the learned Chief Metropolitan Magistrate, Hyderabad, is set aside.

17. This order shall however not preclude the 1st respondent bank from initiating proceedings afresh under Section 14 of the SARFAESI Act in accordance with the due procedure in relation to the subject property. All issues are left open for determination if and as and when a fresh cause of action arises. Pending miscellaneous petitions, if any, in both writ petitions shall stand closed. No order as to costs.

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