

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF SEPTEMBER,
TWO THOUSAND AND NINE

PRESENT

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED
and
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO : 933 OF 2009

Between:

Adapa Janaki Rama Rao and others

..... PETITIONERS

AND

Bank of Baroda, rep. by its Branch Manger, Guntur

.....RESPONDENT

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED
and
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO : 933 OF 2009

ORDER: (per Gulam Mohammed, J)

This writ petition is filed seeking a writ of Mandamus to declare the action of the respondent Bank in issuing notification dated 11.12.2008 by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), without registering the loan transaction under the Act, as illegal and arbitrary.

2. The petitioners obtained loan from the respondent Bank for the purpose of carrying on business by mortgaging the immovable property. The petitioner committed default in repayment of the loan amount and the amount due as on 16.12.2008 is Rs.58,23,647/-. The petitioners stated that at the time of disbursement of loan, the respondent Bank did not register the loan transaction under the provisions of the Act so as to enable them to invoke the provisions of the Act.

3. The learned counsel for the petitioners contended that since the loan transaction was not registered under the Act, the question of invoking provisions under Sections 13(2) and 13(4) of the Act by the respondent Bank does not arise.

4. The learned counsel for the respondent submits that the provisions of the Act can be invoked for recovery of the loan amount since the provisions of the

Act are procedural in nature and not substantive, and to that effect the learned counsel has drawn our attention to Sections 20, 21, 22, 23 and 39 of the Act, which deal with Central Registry, Central Registrar, Register of Securitisation, reconstruction and security interest, transactions, filing of transactions of securitisation, reconstruction and creation of security interest and certain provisions of this Act to apply after Central Registry is setup or cause to be set-up.

5. Heard the learned counsel on either side and perused the record. Cumulative reading of the above referred Sections of the Act, as rightly pointed out by the learned counsel for the respondent, discloses that they are procedural in nature and not substantive. No rights are conferred under the above referred Sections of the Act on the borrowers. Further, once the petitioners obtained loan, they are under obligation to clear it off. The above referred Sections of the Act do not give the petitioners a right to take advantage of the Act. In the circumstances, we do not find any infirmity in issuing notification under Section 13(4) of the Act by the respondent Bank and the writ petition is devoid of merit.

6. Hence, the writ petition is dismissed. It is open to the respondent Bank to confirm the sale, if it is already conducted, otherwise it is open to conduct a fresh sale. No observations made in this order shall come in any way in availing the existing remedies available to the petitioners under law. No costs.

7. The interim order dated 30.07.2009 in W.P.M.P. No.1182 of 2009 stands vacated.

GHULAM MOHAMMED,J

02-09-2009
Stp

NOOTY RAMAMOHANA RAO,J