



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
CIVIL REVISION PETITION NO: 7012 OF 2018

Between:

1. B SRINIVASA RAO S/o Satyanarayana,
Aged about 43 years, R/o Plot No. 151, IDA 2nd Phase, Ramanayyapeta,
Kakinada.

...PETITIONER(S)

AND:

1. M/S. SHRIRAM CITY UNION FINANCE LTD. AND 3 OTHERS Super
Baer Complex, Main Road, Kakinada
2. Swetha Exports rep., by Proprietor, B.Srinivasa Rao, S/o Satyanarayana,
Plot N. 151, IDA 21'd Phase, Ramanayyapeta, Kakinada.
3. B Suguna, W/o Srinivasa Rao, aged 41 years,
R/o Plot No. 151, IDA 2nd Phase, Ramanayyapeta, Kakinada.
4. R. Subrahmanyam, S/o R.V.V. Subbarao, aged 45 year-
MPHA (F), SIC Penuguduru II of PHC Karapa
(Respondents 2 to 4 herein are not necessary parties)

...RESPONDENTS

Counsel for the Petitioner(s): VENKATESWARA RAO GUDAPATI

Counsel for the Respondents: MAHESWARA RAO KUNCHEAM

The Court made the following: ORDER



2019:APHC:15785

HIGH COURT OF ANDHRA PRADESHWEDNESDAY, THE TENTH DAY OF APRIL
TWO THOUSAND AND NINETEEN**PRESENT****THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO****CIVIL REVISION PETITION NO: 7012 OF 2018**

Petition under Article 227 of the Constitution of India against the order dated 19-9-2018 passed in E.P.No.6 of 2015 in A.R.C.No.241 of 2012 on the file of the court of the III Additional District Judge, East Godavari at Kakinada.

Between:

B. Srinivasa Rao, S/o Satyanarayana, Aged about 43 years,
R/o Plot No. 151, IDA 2nd Phase, Ramanayyapeta, Kakinada.

Petitioner/(Judgment Debtor No.2)**AND**

1. M/s. Shriram City Union Finance Ltd., Super Bazar Complex, Main Road,
Kakinada

Respondent (Decree Holder)

2. Swetha Exports, rep., by Proprietor, B. Srinivasa Rao, S/o Satyanarayana, Plot
N. 151, IDA 2nd Phase, Ramanayyapeta, Kakinada.
3. B. Suguna, W/o Srinivasa Rao, aged 41 years, R/o Plot No. 151, IDA 2nd
Phase, Ramanayyapeta, Kakinada.
4. R. Subrahmanyam, S/o R.V.V. Subbarao, aged 45 year- MPHA (F), S/C
Penuguduru II of PHC Karapa (Respondents 2 to 4 herein are not necessary
parties).

**Respondents(Judgement
Debtors Nos. 1,3 &4)****IA NO: 1 OF 2018**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in pursuance of the order dated 19-09-2018 passed in EP.No.6 of 2015 in A.R.C.No.241 of 2012 on the file of the Court of the III Additional District Judge, East Godavari at Kakinada, pending disposal of the above CRP.

For the Petitioner: Venkateswara Rao Gudapati, Advocate**For the Respondent No.1: Maheswara Rao Kunchem, Advocate****the Court made the following: ORDER**

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****CIVIL REVISION PETITION No.7012 OF 2018****ORDER:**

1. Challenge in this Civil Revision Petition, at the instance of the Petitioner/Judgment Debtor No.2, is to the order, dated 19.09.2018, in E.P. No.6 of 2015 in A.R.C. No.241 of 2012, passed by the learned III Additional District Judge, East Godavari at Kakinada (for short, 'the execution Court'), negating the objections raised by the petitioner/JDR in his counter and proceeding with the execution.
2. Heard Sri Venkateswara Rao Gudapati, learned counsel for the petitioner, and Sri Maheswara Rao Kunchem, learned counsel for the Respondent No.1/Decree Holder.
3. The facts in narrow compass are that the 1st respondent/DHR filed Arbitration Case No.241 of 2012 before the sole arbitrator for recovery of Rs.2,86,75,164/-; 2nd respondent herein is the borrower, petitioner and respondent Nos.3 and 4 herein are the co-obligants for the loan sanctioned to the 2nd respondent. The petitioner/JDR No.2 created equitable mortgage over his properties by depositing his title deeds with the 1st respondent/DHR. The borrower and guarantors remained *ex-parte* before the arbitrator. Upon taking the evidence on behalf of the 1st respondent/DHR, the arbitrator passed an Award directing the respondent Nos.2 to 4 and petitioner herein to pay claim amount of Rs.2,86,75,164/- along with future interest at the rate of 10% p.a. from the date of reference of the claim till the date of Award



and at the rate of 18% p.a. from the date of Award till the date of realization.

4. In the Award, it was further directed that, in case of failure of the respondents to pay the claim amount within three months from the date of Award, the claimant was entitled to attach and sell the schedule mentioned mortgage property of the 2nd respondent. Since the petitioner and respondent Nos.2 to 4 failed to pay the amount awarded, 1st respondent/DHR filed E.P. No.6 of 2015, before the execution Court, under Order XXI Rules 54, 64 and 66 of C.P.C. for attachment and sale of the E.P. schedule property and also for realization of the awarded amount. The petitioner/JDR resisted the E.P. mainly on the contention that since the arbitration claim is based on a mortgage transaction, the arbitrator was not competent to pass the award and it is only the civil Court which is competent to pass preliminary and final decrees as per the provisions under Order XXXIV of C.P.C. The said contention is negated by the execution Court observing that the award that was passed by the arbitrator was a simple money decree for recovery of the amount and the arbitrator directed that, if the award amount was not paid within three months, the claimant can attach the mortgage property and in pursuance of the said award the E.P. is filed by the 1st respondent/DHR and got attached the E.P. schedule property and, hence, he is entitled to execute the decree.

Hence, the Civil Revision Petition.



5. Learned counsel for the petitioner reiterated the same contention, as urged before the execution Court to the effect that since the claim of the decree holder is a mortgage claim, which cannot be referred to and resolved by a private arbitrator and rather mortgage claim being a claim in *rem*, it has to be resolved by a public forum (civil court) and therefore, the arbitrator has no jurisdiction to pass the award. He placed reliance on a decision of the Apex Court in ***Booz Allen and Hamilton Inc v. SBI Home Finance Limited and others***¹. The 1st respondent/DHR opposed the Revision contending that the award passed by the arbitrator was only in respect of a simple money decree and, hence, the contention is not tenable.

6. I gave my anxious consideration to the above respective submissions.

7. The contention of the petitioner is not maintainable for the following two reasons:

(a) Firstly, a perusal of the Award shows that, as rightly argued by learned counsel for the 1st respondent/DHR, though the claim is a mortgage claim, however, the arbitrator passed an award for simple money claim and he has not passed the Award in terms of a mortgage decree for recovery of the awarded amount by the sale of mortgage hypotheca. In the Award, the arbitrator directed the respondents therein to pay the claim amount of Rs.2,86,75,164/- along with interest within three months from the date of the award failing

¹ AIR 2011 (SC) 2507



which an opportunity was given to the claimant to attach and sell the schedule mentioned property. So, what was passed is only a simple money decree and not a mortgage decree. So, the Award has got the attributes of a simple money decree but not a mortgage decree. It is trite law that where a party files a mortgage suit and the Court ultimately finds that he is not entitled to mortgage decree but a simple money decree, it can grant money decree. In such a case, the decree holder cannot treat the said decree as a mortgage decree but can treat the same only as a simple money decree. Here is such an instance. Therefore, the arbitrator while allowing the money claim, given liberty to the claimant to attach and sell the mortgage property if the awarded amount is not paid within three (3) months from the date of award. Therefore, the execution Court was right in rejecting the contention of the petitioner.

Then in *Booz Allen*¹, the Hon'ble Apex Court held as thus:

“27. An agreement to sell or an agreement to mortgage does not involve any transfer of right in rem but create only a personal obligation. Therefore, if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable. On the other hand, a mortgage is a transfer of a right in rem. A mortgage suit for sale of the mortgaged property is an action in rem, for enforcement of a right in rem. A suit on mortgage is not a mere suit for money. A suit for enforcement of a mortgage being the enforcement of a right in rem, will have to be decided by courts of law and not by arbitral tribunals. The scheme relating to adjudication of mortgage suits contained in Order 34 of the Code of Civil Procedure, replaces some of the repealed provisions of Transfer of Property



Act, 1882 relating to suits on mortgages (Sections 85 to 90, 97 and 99) and also provides for implementation of some of the other provisions of that Act (Sections 92 to 94 and 96). Order 34 of the Code does not relate to execution of decrees, but provides for preliminary and final decrees to satisfy the substantive rights of mortgages with reference to their mortgage security. The provisions of Transfer of Property Act read with Order 34 of the Code, relating to the procedure prescribed for adjudication of the mortgage suits, the rights of the mortgagees and mortgagors, the parties to a mortgage suit, and the powers of a court adjudicating a mortgage suit, make it clear that such suits are intended to be decided by public fora (Courts) and therefore, impliedly barred from being referred to or decided by private fora (Arbitral Tribunals).”

There is no dispute with regard to the above proposition of law laid down by the Apex Court. The Arbitral Tribunal being a private fora, cannot decide mortgage rights of the parties. However, the above judgment can be distinguished on facts. In this case, as already noted *supra*, the arbitrator only decided the money claim and not the mortgage claim of the 1st respondent/DHR. That is why the arbitrator has clearly held that in case of failure of the awarded amount by the respondents within three months, the claimant is entitled to attach and sell the mortgage property. If the award is a mortgage decree, there was no necessity of giving direction to attach and sell the property.

(b) Secondly, the contention put forth by the revision petitioner is not maintainable also for the reason that he has not contested the matter before the arbitrator and has not filed any Appeal under Section 34, challenging the Award. Therefore, in the execution stage, he cannot challenge the validity of the Award.



8. Thus, I find no merits in the Civil Revision Petition and, accordingly, the Civil Revision petition is dismissed confirming the order, dated 19.09.2018, in E.P. No.6 of 2015 in A.R.C. No.241 of 2012, passed by the learned III Additional District Judge, East Godavari at Kakinada.No order as to costs.

9. As a sequel, miscellaneous petitions, if any pending, shall also stand dismissed.

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Sd/- K.VENKAIAH
ASSISTANT REGISTRAR

KV
SECTION OFFICER

To,

**One Fair Copy to Hon'ble Sri Justice U. Durga Prasad Rao
(for his Lordship's kind Perusal).**

1. The III Additional District Judge, East Godavari at Kakinada.
2. 9LR Copies.
3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
4. The Secretary, Andhra Pradesh Advocates Association, Library, High Court Buildings, Hyderabad.
5. One CC to Sri Venkateswara Rao Gudapati, Advocate (OPUC)
6. One CC to Sri Maheswara Rao Kuncheam, Advocate (OPUC)
7. Two CD copies.

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HIGH COURT

2019:APHC:15785

DATED: 10-04-2019

ORDER

CRP NO.7012 OF 2018

RS. 10-50.

(7)

DISMISSING THE CRP

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