

**SUPREME COURT OF INDIA**

State Bank of India

Vs.

Metta Chandra Sekhar Rao

C.A.No.17372 of 2017

(Ranjan Gogoi and Navin Sinha,JJ.)

30.10.2017

**JUDGMENT**

**Ranjan Gogoi,J.,**

SLP(Civil) No.32885 of 2016

1. Leave granted.
2. We have heard the learned counsels for the parties. We have perused the impugned order of the High Court and have also considered the facts of the case.
3. The challenge in this appeal is to an order dated 24th August, 2016 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition (Civil) No.12879 of 2016 by which the High Court has set aside the sale proceedings held in respect of the house property of the respondent No.1 and the sale certificate dated 15 th March, 2016 issued in favour of the auction purchaser.
4. The High Court took the view that though the mortgage was created by deposit of title deeds there was a letter of the mortgagor to the appellant-State Bank of India on 28 th May, 2011 whereby the mortgagor had waived his rights under Section 61, 65A and 67A of the Transfer of Property Act, 1882. Relying on a decision of this Court in *Veeramachineni Gangadhara Rao v. The Andhra Bank Ltd. And Ors.*<sup>1</sup> the High Court took the view that the waiver of the rights made by the mortgagor amounts to a contract and unless the said document is registered the mortgage will not take effect. Accordingly, the mortgage was held to be invalid and consequently the sale proceedings including the sale certificate were set aside.
5. Upon due consideration of the matter, we arrive at the conclusion that the High Court was not justified in passing the impugned order and setting aside the sale certificate.

6. The issue with regard to validity of the mortgage on the strength of which the loan was sanctioned and obtained was not raised at any point of time in any of the earlier proceedings. It was so raised for the first time before the High Court. The High Court, in our considered view, therefore, ought not to have gone into the said question at such a belated stage. The fact that the mortgage was acted upon by the parties to sanction and obtain the loan is another fact that the High Court had overlooked. The mortgage was also in respect of certain other properties, the sale of which has attained finality. This is a vital aspect of the case that the High Court ought to have taken into account while passing the impugned order. Above all, an independent Special Leave Petition (Special Leave Petition (Civil) No.13173 of 2017) has also been filed by the auction purchaser who is also aggrieved by the order of the High Court. The auction purchaser is an innocent third party who, it is stated, has obtained a loan to pay the sale price and is presently servicing the said loan. It is also stated that the auction purchaser is in possession of the property since March 2016 and has spent considerable amount of money in renovating/repairing the premises in question.

7. For all the aforesaid reasons, we are of the view that the conclusion of the High Court is not tenable in law. We accordingly allow this appeal and set aside the order of the High Court.

8. Leave granted.

9. This appeal is disposed of in terms of the order of this Court passed today in Civil Appeal arising out of Special Leave Petition (Civil) No.32885 of 2016.

Judgment Referred.

<sup>1</sup>(1971) 1 SCC 0874