

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3644 OF 2020

(Arising out of SLP (C) No. 29220 of 2019)

M/S ASSET RECONSTRUCTION COMPANY (INDIA) LTD. Appellant(s)

VERSUS

SAGI NARAYANA RAJU

Respondent(s)

O R D E R

Leave granted.

M/s. Lalitha Cement Industries Ltd. was sanctioned a loan of Rs.274 crores by Banks between 2009-2011. On 27.08.2012, a notice was issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') demanding an amount of Rs. 309.91 crores on 27.08.2012. M/s. Lalitha Cement Industries Ltd. filed Securitization Application being S.A. No. 477 of 2012 challenging the notice under Section 13(2) before the Debt Recovery Tribunal. The application was dismissed by the DRT. Meanwhile M/s. Premier Global Logistics Ltd. initiated winding up proceedings against M/s. Lalitha Cement Industries Ltd. before the High Court for the State of Telangana at Hyderabad.

On 03.08.2015, an order of winding up was passed by the High Court and Official Liquidator was appointed. On

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10.12.2015, the Official Liquidator issued notice for taking charge of the assets of the company and took symbolic possession of the assets.

In the meanwhile, the loan was assigned by the State Bank of India to the appellant on 27.06.2014. An application was filed by the appellant under Section 14 before the Chief Judicial Magistrate under the SARFEASI Act for appointment of receiver for taking over physical possession of the property. On 09.07.2018, the Advocate Commissioner appointed by the Chief Judicial Magistrate, took possession of the property.

The respondent filed a writ petition before the High Court challenging the order passed by the Chief Judicial Magistrate. The High Court by order dated 06.11.2019, directed restoration of the property. The High Court observed the Chief Judicial Magistrate could not have ordered delivery of the property without taking permission from the Company Court (High Court). The High Court also observed that there is suppression of material facts by the appellant before the Chief Judicial Magistrate in the criminal application under Section 14 of the SARFAESI Act filed before Chief Judicial Magistrate as there is no mention about M/s. Lalitha Cement Industries Limited already been wound up. The fact that Official Liquidator appointed by the Court had taken over the symbolic possession of the company was not brought to the notice of the Magistrate.

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The interim order passed by the High Court is on the basis that the Magistrate could not have directed the possession to be taken without seeking permission from the Company Court. This Court in *Pegasus Assets Reconstruction Private Limited v. Haryana Concast Limited and Another* (2016) 4 SCC 47, concluded that a Company Court exercising jurisdiction under the Companies Act has no control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under SARFAESI Act, 2002. Therefore, there is no requirement for the Magistrate exercising power under Section 14 SARFAESI Act to seek permission from the Company Judge before directing handing over of possession of a property.

The interim order of the High Court is set aside and the High Court is requested to expedite the hearing of the Writ Petition.

The civil appeal stands disposed of.

....., J.
[L. NAGESWARA RAO]

....., J.
[HEMANT GUPTA]

....., J.
[AJAY RASTOGI]

New Delhi;
November 03, 2020.

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ITEM NO.9 Court 6 (Video Conferencing) SECTION XII-A (CORRECTED)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No. 29220/2019

(Arising out of impugned interim judgment and order dated 06-11-2019 in WP No. 32121/2018 passed by the High Court for the State of Telangana at Hyderabad)

M/S ASSET RECONSTRUCTION COMPANY (INDIA) LTD. Petitioner(s)
VERSUS
SAGI NARAYANA RAJU Respondent(s)

(With IA No. 60442/2020 - APPLICATION FOR VACATION OF INTERIM ORDER, IA No. 8088/2020 - CONDONATION OF DELAY IN FILING THE SPARE COPIES and IA No. 190415/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 03-11-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s)

Mr. Krishnan Venugopal, Sr. Adv.
Mr. Ankur Sood, AOR
Mr. Kaushik Mishra, Adv.

For Respondent(s)

Mr. A. Ramalingeswara Rao, Sr. Adv.
Mr. Sumanth Nookala, AOR
Mr. Goli Ramakrishna, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The civil appeal stands disposed of in terms of the signed order.

Pending applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(ANAND PRAKASH)
BRANCH OFFICER

[Signed order is placed on the file.]

C.A. No. 3644 /2020
(@ SLP (C) No. 29220/ 2019)

ITEM NO.9 Court 6 (Video Conferencing) SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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