

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .458 OF 2010

SANKARA REDDY

APPELLANT (S)

VERSUS

ANDHRA BANK

RESPONDENT (S)

O R D E R

1. This appeal is filed against the judgment dated 06.04.2006 passed by the High Court of Andhra Pradesh at Hyderabad in C.R.P. No.268 of 2006.

2. The defendant No.2 in OS No. 94 of 1998 is the appellant before us. There was a decree passed against the appellant as the guarantor of a loan obtained by the principal debtor from the respondent-Andhra Bank. The decree was a composite decree, which could be executed either by the sale of the mortgaged property or by proceeding against the principal-borrower and the guarantor. The decree holder (Andhra Bank) chose the later option which was called into question by the appellant-defendant in the execution proceedings

i.e. Execution Petition No.115/2003. The issue having been decided against the appellant-defendant, a civil revision petition was filed in the High Court which was dismissed affirming the order passed by the executing Court which order also directed the issuance of an arrest warrant against the appellant-defendant as provided under Section 51 of the Code of Civil Procedure, 1908.

3. Assailing the said order this appeal has been filed. We have heard the learned counsels for the parties. We have read and perused the order of the High Court under challenge.

4. The decree against the appellant-defendant No.2 is a composite decree leaving an option to the decree-holder to proceed against the mortgaged property or against the principal debtor and the guarantor. This is a course of action which is permissible on the strength of the decision of this Court in State Bank of India vs. Indexport Registered¹. The decree not having been satisfied, the directions were

passed for issuance of arrest warrant under Section 51 of the Code of Civil Procedure, 1908 for detention of the appellant-defendant No.2 in civil prison.

5. Before the High Court, the very same issue with regard to the maintainability of the execution proceedings was agitated which on the strength of decision of this Court in *State Bank of India* (supra) was negatived by the High Court. Insofar as the arrest warrant under Section 51 is concerned, the High Court considered the evidence on record and came to the conclusion that the contention of the decree holder that the appellant-defendant No.2 despite having means and landed property refused to pay the decretal amount stands substantiated.

6. In this regard we have taken note of the contrary evidence tendered by the defendant's witnesses before the executing Court and the further statements of the said witnesses that they have deposed without being summoned by the Court and at the request of the appellant.

7. On the authority of the decision of this

Court in *State Bank of India* (supra) and the findings recorded by the High Court with regard to the availability of means at the disposal of the appellant-defendant No.2, we find no infirmity in the order of the High Court. To make the matter worse, the name of the principal debtor, who was impleaded as respondent No.2 in the present appeal, has been struck off at the instance of the appellant himself. In the absence of the principal debtor as a party to the present appeal, we are unable to pass any order save and except to affirm the order of the High Court insofar as the appellant-defendant No.2 is concerned.

8. For the aforesaid reasons, the appeal is found to be without merit and it is accordingly dismissed.

9. No costs.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
OCTOBER 26, 2017

ITEM NO.102

COURT NO.3

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

Civil Appeal No(s). 458/2010

SANKARA REDDY

Appellant(s)

VERSUS

ANDHRA BANK

Respondent(s)

(IA No.106839/2017-RECALLING THE COURTS ORDER)

Date : 26-10-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) *Mr. V. Sridhar Reddy, Adv.
For Mr. V. N. Raghupathy, AORFor Respondent(s) Mr. Mithilesh Pal, Adv.
For Mr. Chander Shekhar Ashri, AORUPON hearing the counsel the Court made the following
O R D E RThe appeal is dismissed in terms of the
signed order.In view of the above, all pending
application(s) shall stand disposed of.(NEETU KHAJURIA)
COURT MASTER(ASHA SONI)
BRANCH OFFICER

(Signed order is placed on the file.)

*(Appearance slip not given)