

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND**

THE HON'BLE MRS JUSTICE ANIS

WRIT PETITION No.41079 OF 2014

ORDER:- (per Hon'ble Sri Justice K.C.Bhanu)

This writ petition is filed seeking to issue a Writ of Mandamus declaring the action of the respondents in treating the Educational Loan Account No.020130031000850 as Non-Performing Asset under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") and also the demand notice, dated 30.08.2014, published in Hindu Daily on 11.10.2014 as illegal and arbitrary.

2. Petitioner No.1 obtained educational loan of Rs.6.00 lakhs from the respondent Bank to prosecute her higher studies in M.S. two years course in United States of America. She paid some instalments and later, committed default in repayment of the entire loan amount. The loan was declared as Non-performing Asset (N.P.A.). Respondent No.3 published a notice under Section 13(2) of the SARFAESI Act, dated 30.08.2014, in Hindu Daily News paper on 11.10.2014. According to the petitioners, they paid the entire loan amount due to the Bank and according to the respondent Bank, the petitioners are due an amount of Rs.6,06,958/- as on 30.07.2014 with subsequent interest as per the agreement.

3. Learned counsel for the petitioners contended that without issuing a notice under Section 13(2) of the SARFAESI Act, the respondent Bank is proceeding further; that all the loan instalments due to the respondent Bank have been paid; that under sub-section (3A) of Section 13 of the SARFAESI Act, on receipt of the notice under sub-section (3), if the borrower makes any representation or raises any

objection, the Bank shall consider such representation or objection and if the secured creditor comes to a conclusion that such representation or objection is not acceptable or tenable, he shall communicate the same within fifteen days of receipt of such representation or objection the reasons for rejecting the representation and therefore, he prays to admit the writ petition.

4. Since the demand notice, dated 30.08.2014, is in dispute and the contentions raised by the learned counsel for the petitioners are relating to the questions of fact, they cannot be determined by this Court. Whether the respondent Bank issued a notice under Section 13(2) of the SARFAESI Act to the petitioners, whether the petitioners made a representation to the respondent Bank and whether the petitioners paid all the instalments or not are to be pleaded and proved before the Debts Recovery Tribunal. Therefore, the petitioners are at liberty to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and raise all these contentions there.

5. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE K.C.BHANU

JUSTICE ANIS

Date: 31.12.2014
AMD



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