HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.18609 of 2015

ORDER: (*Per Hon'ble Sri Justice R.Subhash Reddy*)

This writ petition is filed for a Mandamus to declare the action of the respondents 1 and 2 in initiating steps for taking possession of the house bearing No.5-2-248/M/16 situated at Musthafa Nagar in Khammam in pursuance of notice, dated 24.02.2015, issued by the 2nd respondent in exercise of power under Section 13 (4) of the SARFAESI Act, 2002, as illegal and arbitrary.

The 4th respondent was the original owner and possessor of the house bearing No.5-2-248/M/16, constructed in an area of 171 sq. yards, in Plot No.10 part and Plot No.11 part situated at Mustafanagar, Khammam. The said property was purchased by the petitioners through registered sale deed dated 21.03.2012. Prior to the said sale, the 4th respondent has given the said property as security for the loan which he has availed from the 1st respondent-Bank. In view of the default committed by the 4th respondent in repayment of the loan amount, respondents 1 and 2 have initiated proceedings under the SARFAESI Act to recover the loan amount by selling the secured asset. After issuing the demand notice, possession notice under Rule 8 (1) and (2) of the Security Interest (Enforcement) Rules, 2002 framed under the SARFAESI Act was issued to take possession of the secured asset. At that stage, the present writ petition is filed by the petitioners claiming rights, title and possession pursuant to transfer of subject property in their favour by way of registered sale deed executed by the 4th respondent.

At the time of admission, this Court, by order dated 24.06.2015, issued directions to the respondent Bank not to take any steps to enforce the possession notice, dated 24.02.2015, subject to condition of depositing an amount of Rs.8,75,000/- by the petitioners.

It is represented by learned counsel for the petitioners and also admitted by learned counsel appearing for the respondent Bank that pursuant to interim orders, dated 24.06.2015, passed by this Court, an amount of Rs.8,75,000/- is already paid by the petitioners.

Learned counsel for the petitioners further submitted that the petitioners are prepared to pay the balance amount also, provided reasonable time is granted by this Court, to close the loan account of the 4th respondent.

When the matter was called on 28.10.2015, learned counsel for the 4th respondent submitted that the 4th respondent has no objection to handover the title deeds with regard to the property in question to the petitioners and sought time to file a memo to that effect, but no such memo is filed.

In view of the representation made by the 4th respondent, learned counsel appearing for the 1st respondent-Bank submits that the Bank has no objection for the petitioners paying the amount, however, title deeds will be handed over to the petitioners subject to consent of the 4th respondent. It is further submitted by the learned counsel for the 1st respondent-Bank that when steps were being taken to recover the loan amount, the petitioners lodged a criminal complaint, which is registered as Crime No.168 of 2015 on the file of

P.S.Khanapuram, Khammam District, and also filed an injunction suit being O.S.No.103 of 2015 on the file of the Principal Junior Civil Judge, Khammam, by making false allegations, and the same are pending. In response thereto, learned counsel for the petitioners submitted that steps are being taken for withdrawal of both the proceedings i.e., criminal complaint as well as the suit filed by the petitioners against the 3rd respondent. This statement of learned counsel for the petitioners is placed on record.

As much as the petitioners have already paid 50% of the amount and in view of the representations made by learned counsel for the respondent Bank, we deem it appropriate to dispose of the writ petition, permitting the petitioners to pay the balance amount payable by them in two instalments i.e., half of the balance amount as first instalment within a period of three months from today and the remaining half as second instalment within a period of two months thereafter. Till such time, no further steps shall be taken to dispossess the petitioners from the property in question. After the loan account is closed on payment of the balance amount including costs, if any, incurred by the respondent Bank, it is open to the respondent Bank to handover the title deeds to the petitioners subject to consent of the 4th respondent. It is also made clear that this will not preclude the respondent Bank from settling the balance amount under One Time Settlement scheme, if any. It is further made clear that if there is default in paying the balance amount as directed by this Court, it is open to the respondent Bank to take further steps in accordance with law, after expiry of the time granted by this Court.

Subject to the above, the writ petition is disposed of. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

03.11.2015

v v