

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.35700 of 2015

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

This writ petition is filed for a Mandamus to direct the 1st respondent Bank not to take any further steps for taking possession of the semi finished Flat No.103, in the 1st Floor, with plinth area of 930 sq. feet including common area, along with undivided share of land to an extent of 30 sq. yards, constructed in Plot Nos.70 & 71 in Sy.No.140 of Satya Enclave situated at Kukatpally Village & Municipality, Balanagar Mandal, Ranga Reddy District, pursuant to the notice dated 10.10.2015.

M/s. RGK Granite Exports had borrowed certain amounts from the 1st respondent Bank for its business purposes. The petitioner stood as a guarantor for the same. In view of default committed by the borrower, the 1st respondent Bank has initiated proceedings under the SARFAESI Act. After issuing demand notice, demanding an amount of Rs.73,35,940/- due as on 31.07.2013, notice under Section 13 (4) of the SARFAESI Act was issued.

It is contended by learned counsel for the petitioner that subsequent to issuance of demand notice and the possession notice, some amounts were paid. He filed a computer generated copy of the statement issued by the 1st respondent Bank on 02.12.2013, showing the balance amount of Rs.44,85,200/- due as

on 02.12.2013 in the loan account of M/s. R.G.K.Granite Exports.

When the possession notice was issued, the late husband of the petitioner has approached the 2nd respondent-Debts Recovery Tribunal by filing Securitisation Application under Section 17 of the SARFAESI Act and also interlocutory application being I.A.No.2471 of 2014, wherein an interim order was passed on condition of depositing Rs.15,00,000/-. It is stated that during the lifetime of late husband of the petitioner, he also filed another interlocutory application, seeking modification of the condition of depositing Rs.15,00,000/- to that of depositing Rs.9,00,000/-, and the same is pending.

In this writ petition, it is the grievance of the petitioner that in view of the death of her husband, she filed an application for impleading her as a party to the S.A and that, during pendency of the said application, the respondent Bank is taking steps for taking possession of the secured asset without issuing notice to her. It is also the allegation of the petitioner that notice under Section 13 (4) of the SARFAESI Act was issued in the name of her late husband.

In view of pendency of the S.A on the file of the 2nd respondent-Tribunal as well as interlocutory applications filed therein, we are not inclined to record any findings on the application made by the petitioner, as it is for the Tribunal to consider the same and pass appropriate orders therein. The material placed before this Court discloses that interim orders were passed by the Tribunal on condition of depositing Rs.15,00,000/- and the application filed by the husband of the petitioner, for modification of the said condition, is pending consideration. It is further represented that yesterday though the matter has come up before the incharge Officer, the same is not taken up and it was adjourned further.

Since the application filed by the late husband of the petitioner seeking modification of the condition, is pending consideration, we deem it appropriate to dispose of the writ petition, permitting the petitioner to deposit Rs.10,00,000/- within a period of two weeks from today. On such payment, no further steps shall be taken for taking possession of the secured asset. In the meanwhile, the Tribunal is directed to dispose of the implead petition filed by the petitioner and also the application filed by the late husband of the petitioner for modification of the interim order passed in I.A.No.2471 of 2014. It is open to the Tribunal to consider the application filed for modification, on its own merits, and pass appropriate orders. It is also made clear that after passing appropriate orders in the modification petition and implead petition, it is open to the respondent Bank to pass appropriate orders by taking further steps in accordance with law.

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

