HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION Nos.10334 AND 10232 OF 2015

COMMON ORDER: (*Per* Hon'ble Sri Justice Ramesh Ranganathan)

Despite service of notices on respondents 3, 6 and 7 in Writ Petition No.10232 of 2015, Sri B.S. Prasad, learned counsel, has entered appearance only on behalf of 6th respondent. Neither have the 3rd and 7th respondent appeared in person nor have they entered appearance through counsel. Likewise in Writ Petition No.10334 of 2015, though notices were served on respondents 4 and 5, only the 4th respondent has entered appearance through Sri B.S. Prasad, learned counsel. Neither has the 5th respondent appeared in person nor through counsel.

Heard Sri S. Satyanarayana Moorthy, learned counsel for the petitioner-bank and Sri B.S. Prasad, learned counsel for the respondents and, at their request, these Writ Petitions are disposed of at the stage of admission.

The present case illustrates the plight of banks even after Securitization and Reconstruction of Financial Assets and Enforcemen Security Interest Act, 2002 (for short, 'the SARFAESI Act') has come into fo Sri B. Kiran Kumar and Sri B. Kishore Kumar are the sons of late Sri B. Raj who stood as a guarantor for the loan obtained from the petitioner-bank by Sri Chakra Enterprises. A notice under Section 13(4) of the SARFAESI Act issued to M/s. Sri Chakra Enterprises, Sri B. Kiran Kumar and Sri B. Kis Kumar. The date of the Section 13(4) notice was wrongly stated therei 30.12.2012 instead of 05.04.2012.

On its jurisdiction being invoked in S.A. Nos.200 of 2012 and 20 2012, the Debts Recovery Tribunal, Hyderabad (for short, 'the DRT') obse in its order dated 10.04.2012, that, in view of the error in the date, possession notice was not valid; and there could not be two possession not dated 30.12.2012 and 05.04.2012. The respondent-bank was directed to d further proceedings, in pursuance of the notice dated 30.12.2012, subjec payment of Rs.1.00 lakh by the applicants in S.A. No.200 of 2012, and Rs.1(lakhs by the applicants in S.A. No.201 of 2012, directly to the respondent-b within eight weeks.

The amount due, as mentioned in the notices issued under Section 1 of the SARFAESI Act, in S.A. No.200 of 2012 exceeded Rs.11 lakhs, an S.A. No.201 of 2012 it exceeded Rs.3.5 Crores.

As the very basis of the order of the Tribunal is the error in the (mentioned in the Section 13(4) notice, the petitioner-bank filed a memo be the DRT on 23.07.2012 seeking permission to withdraw the said notice wl contained the erroneous date, with liberty to issue a fresh notice to respondent. Though the memo was filed as early as in July, 2012, the matt being repeatedly adjourned thereafter for the past nearly three years witl any orders being passed by the Tribunal. Any procedural error, in issuing Section 13(4) notice, can always be rectified by the bank. All that it had so from the DRT was to be granted permission to withdraw the earlier Sec 13(4) notice, and for liberty to issue a notice afresh under Section 13(4) of SARFAESI Act. It is disconcerting that such an innocuous request of petitioner-bank should be kept pending for the past three years.

While we would, ordinarily, have directed the Tribunal to pass an o within a specified time frame, we are informed by learned counsel on either s that the presiding officer of the DRT is due to retire by the end of this month. the typographical error, in the date mentioned in the Section 13(4) notic sought to be corrected by the petitioner-bank, withdrawing the earlier Sec 13(4) notice and by issuing a notice afresh complying with the requiremen Section 13(4) of the Act, we consider it appropriate to permit the petitioner t so.

The order of the Tribunal dated 10.04.2012 stands modified, the ea Section 13(4) notice is permitted to be withdrawn, and the petitioner herei given liberty to issue a notice afresh, under Section 13(4) of the Act accordance with law. Needless to state that, while the petitioner is entitl issue a fresh notice under Section 13(4) of the Act, and thereafter take actio

realization of its dues in accordance with law, any action, which the petitio
bank may take, shall be subject to the result of S.A. No.200 of 2012 and 20
2012 pending before the Debts Recovery Tribunal.

Both these Writ Petitions stand disposed of accordingly. In consequei
miscellaneous petitions, if any, pending in these Writ Petitions, shall also st
disposed of. No order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 23-04-2015.
Dsh

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION Nos.10334 & 10232 OF 2015

(Common Order of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)

Date. 23-04-2015

DSH

24.04.2015, 30042015