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

<u>WRIT PETITION No.15926 of 2015</u>

<u>ORDER :</u> (per Hon'ble Sri Justice R.Subhash Reddy)

The petitioners have filed this writ petition seeking *Mandamus* to declare the action of respondent Nos.1 and 2 in not considering their representations dated 20.04.2015 and 02.04.2015 to clear the outstanding loan amount in the Loan Account No.31541184264 together with costs and charges, as arbitrary and illegal.

2. The 2nd respondent-Bank has advanced loan to M/s. Mithra Constructions, represented by its Managing Partner Sri B. Rama Mohan. The 2nd petitioner herein, who is the wife of Sri B. Rama Mohan, is also a partner in the said Firm. The mother of the said B. Rama Mohan stood as a guarantor and mortgaged her property for securing the loan amount. The said guarantor had two sons and one daughter, and the petitioners are the daughters-in-law of the said guarantor.

3. The guarantor of the loan amount died even before the loan is discharged. It is the grievance of the petitioners that though the petitioners are ready and willing to clear the outstanding amount due in the said loan account, the respondent-Bank is not accepting the same and taking steps to initiate proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. In the counter affidavit filed by respondent Nos.1 and

2, while denying various allegations made by the petitioners, it is stated that the petitioners are legally entitled to discharge the loan amount, being the legal heirs of the guarantor, but the title deeds will be given to all the legal heirs of the mortgagor. Further, it is stated that as the petitioners are coming forward to clear the outstanding loan amount, the respondent-Bank has insisted them to obtain Succession Certificate as contemplated under Section 371 of the Indian Succession Act, for the property, which is mortgaged, but without obtaining certificate under the Indian Succession Act, the petitioners are not entitled for return of the documents pertaining to the mortgaged property, even if they come forward to clear the loan amount.

5. Learned counsel for respondent Nos.3 and 4 submits that he has no objection to grant the relief sought for in the writ petition. Though respondent No.5 is served, there is no appearance on her behalf.

6. It is not in dispute that the petitioners are claiming right over the property, which is mortgaged by the deceased-guarantor to the loan amount. Though the petitioners are legal heirs of the deceased-guarantor, unless they obtain Succession Certificate by following the due procedure as contemplated under Section 371 of the Indian Succession Act, they are not entitled for grant of the relief sought in the writ petition. As rightly stated in the counter affidavit filed by respondent Nos.1 and 2, even if the petitioners claim that they are the only successors to the mortgaged property, tomorrow there is every likelihood of the other legal heirs coming forward claiming right over the mortgaged property.

7. For the aforesaid reasons, we do not find any merit to grant the relief sought for in this writ petition.

8. Accordingly, this writ petition is dismissed. If the petitioners want to clear the loan amount and seek for release of the mortgaged property, it is open to them to obtain Succession Certificate from the competent authority as contemplated under Section 371 of the Indian Succession Act and approach the respondent-Bank for release of the documents pertaining to the mortgaged property.

9. As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

17.08.2015.
Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY
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