

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

WRIT PETITION No.37147 OF 2015

ORDER:- (per Hon'ble Sri Justice R.Subhash Reddy)

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This Writ Petition is filed seeking to issue a writ, direction or order more particularly, one in the nature of writ of *Mandamus* to declare the action of respondent No.1 Bank in trying to dispossess the petitioners from the building bearing D.No.12-404, near B.N.Talkies, Adoni, Kurnool District, based on the *ex parte* orders in Crl.M.P.No.16 of 2015, dated 13.2.2015, on the file of the Chief Judicial Magistrate, Kurnool, obtained against respondent No.2 without determining the lease of the petitioners, by the Court under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") as illegal and arbitrary, and consequently, to direct respondent No.1 not to dispossess the petitioners from the said building.

2. We have heard learned counsel for the petitioners and also the learned Standing Counsel for respondent No.1 Bank.

3. Case of the petitioners is that they are the tenants of the aforementioned commercial complex belonging to respondent No.2. Recently, the petitioners have received a copy of the caveat filed by respondent No.1 Bank before the Senior Civil Judge, Adoni. On perusing the contents of the caveat, they came to know that respondent No.2 had obtained loan from respondent No.1 Bank by mortgaging the said building. Thereafter, as respondent No.2 has defaulted in repayment of the loan amount, respondent No.1 Bank had filed Crl.M.P.No.16 of 2015 under Section 14 of the SARFAESI Act before the Chief Judicial Magistrate – cum – Principal Assistant

Sessions Judge, Kurnool to appoint an Advocate Commissioner to take vacant physical possession of the schedule property and to deliver the same to respondent No.1 Bank. Respondent No.1 Bank suppressed the fact that the petitioners are the tenants of the subject building and obtained *ex parte* order on 13.2.2015. Basing on the said order, respondent No.1 Bank is intending to evict the petitioners from the subject building. Hence, they filed the present writ petition.

4. When the matter is called for hearing, it is brought to our notice by the learned Standing Counsel for respondent No.1 Bank that earlier, an order was passed in CrI.M.P.No.17 of 2015 on 13.2.2015 by the Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, Kurnool, with regard to the subject property in the present writ petition, which was filed under Section 14 of the SARFAESI Act and challenging the same, respondent No.2, who is admittedly, the owner of the property, approached this Court and filed W.P.No.27525 of 2015. This Court, by order, dated 01.09.2015, disposed of the said writ petition directing the respondent therein not to take any steps to dispossess the petitioners therein pursuant to the order impugned therein on condition of the petitioners therein depositing an amount of Rs.25,00,000/- within a period of four (4) weeks from the date of passing of that order. It is stated that pursuant to the said directions, no amount is deposited and further, the Debts Recovery Tribunal also dismissed Securitization Application Nos.36 and 37 of 2015 by way of a common order dated 16.11.2015.

5. The petitioners are claiming rights through respondent No.2, who has already questioned the impugned order. As such, the petitioners are not in a better position than respondent No.2 to question the validity of the order, dated 13.2.2015, in CrI.M.P.No.16 of 2015. In any event, though the petitioners claim that they are in possession of the subject property for the last several years, their possession is not evidenced by registered lease deeds.

6. In that view of the matter, we do not find any merit in the writ petition for grant of directions as prayed for. However, as the petitioners plead that they need sometime to secure alternative accommodation, we permit the petitioners to vacate the premises in question within a period of three (3) months from today.

7. Subject to the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

Date: 09.12.2015
AMD

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Dated: 09.12.2015

AMD