

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

WRIT PETITION No.23639 of 2015

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

This writ petition is filed with the prayer, which reads as under:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents in refusing to deliver the documents and possession of the property as per the letter dated 12.03.2015, 17.05.2015 and 15.06.2015 and closed the account on 02.07.2015 is contrary to law, is illegal, arbitrary against the principles of law under the provisions of SARFAESI Act and consequently direct the respondents to handover the possession and documents mentioned in Schedule-A list under mortgage of title deed dated 19.07.1983; and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

The petitioner has mortgaged the property to respondent Nos.1 to 6 Bank while availing loan facility and committed default in repayment. In view of the same, the Bank has filed a suit in O.S.No.47 of 1990 on the file of the Principal Senior Civil Judge, Tenali, for recovery of money and the original documents filed by them were marked in the said suit. The suit was decreed. When the execution

proceedings were pending, respondent Nos. 7 and 8, claiming interest over the property, have approached this Court by filing W.P.No.40789 of 2014 and expressed their readiness to discharge the entire amount due to the Bank. In the said writ petition, this Court permitted respondent Nos. 7 and 8 herein to pay the entire amount due to the Bank within a period of four weeks from the receipt of a copy of the order. It is stated that such amount is already paid and the account is closed.

In this writ petition, it is the case of the petitioner that though she is the mortgager of the property by depositing title deeds, the respondent Bank is not returning the documents even after the loan account is closed.

Separate counter affidavits are filed by the Bank and respondents 7 and 8.

In the counter affidavit filed by the respondent Bank, while denying various allegations made by the petitioner, with regard to the documents, it is admitted that the petitioner has created mortgage by deposit of title deeds with the respondent Bank and documents 1 to 6 as shown in the list of documents annexed to the writ petition were deposited with the Bank. It is also stated that at the time of filing the suit in O.S.No.47 of 1990, the Bank has filed the documents, which were deposited by the petitioner, along with the plaint. It is further stated that in the said suit, except

document No.2 i.e., partition deed, dated 15.12.1982, the other documents filed by the Bank were marked as Exs.A5 to A9. It is also stated that the Bank has applied for return of the documents and soon after they receive them, they will furnish the same to the petitioner, who has deposited them pursuant to creation of mortgage.

With regard to possession, it is clearly stated in the counter affidavit filed by the Bank that possession notice under Section 13 (4) of the SARFAESI Act was issued and also they obtained orders under Section 14 of the SARFAESI Act from the Executing Magistrate, but physical possession of the mortgaged property was not taken by the Bank, as such, the question of handing over possession to the petitioner does not arise.

Similarly, respondent Nos. 7 and 8 have also filed counter affidavit stating that they acquired title over the mortgaged property and the petitioner has nothing to do with the said property. It is also stated that as respondent Nos.7 and 8 have paid the entire amount due, they are entitled for return of the documents.

In view of the stand taken by the respondent Bank in their counter affidavit that the petitioner has deposited the documents with them, we are of the view that the petitioner is entitled for return of those documents, as she has deposited them by creating mortgage. Hence, we deem it

appropriate to direct the respondent Bank to furnish the documents to the petitioner soon after they receive them from the Court where O.S.No.47 of 1990 is filed. With regard to petitioner's claim of possession of the secured asset, as it is clear from the counter affidavit filed by the Bank that the Bank authorities have not taken possession of the property either in execution of the decree obtained in the suit or under the proceedings initiated under the SARFAESI Act, the question of issuing direction to the respondents to deliver possession of the secured assets to the petitioner does not arise. At the same time, so far as the claim made by respondent Nos. 7 and 8 is concerned, this Court is of the view that the same cannot be adjudicated in this writ petition. It is also made clear that this Court has not recorded any finding on the dispute between the petitioner and respondent Nos.7 and 8 with regard to the rights and title over the property.

Subject to the above observations and directions, this 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**

07.12.2015

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