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

WRIT PETITION No.29540 OF 2015

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

Heard Sri D.V. Seetharam Murthy, learned Senior Counsel appearing for the petitioners and Sri B. Ravindra Reddy, learned counsel appearing for the respondents.

This Writ Petition is filed questioning the order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') by the Chief Metropolitan Magistrate, Hyderabad.

Though various contentions are raised on merits, during the course of hearing, it is noticed that as against the order passed under Section 14 of the Act, the matter was carried in appeal under Section 17 of the Act before the Debts Recovery Tribunal, Hyderabad, and as the Office of the Tribunal has taken objection with regard to maintainability of such appeal, the matter was placed before the Presiding Officer and the Tribunal, by order, dated 16.03.2015, has upheld such Office objection and rejected the appeal at SR stage.

Further, it is brought to our notice by learned counsel appearing for the parties that in this case, even before issuing Possession Notice under Section 13 (4) of the Act, respondents have taken measures under Section 14 of the Act and in view of the ratio laid down by the Honourable Supreme Court in **Standard Chartered Bank v. Noble Kumar and others**[1], though the appeal is maintainable, the impugned order is passed rejecting the appeal filed by the petitioners.

The issue with regard to maintainability of the appeal filed under Section 17 of the Act against the orders passed under Section 14 of the Act is considered by the Honourable Supreme Court in the aforesaid judgment, which reads as under:

> "The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower. Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be

> obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available."

In view of the aforesaid judgment, though no measures are taken by issuing notice under Section 13 (4) of the Act, the petitioners cannot be deprived of the remedy provided under Section 17 of the Act. Having regard to the ratio laid down by the Honourable Supreme Court in the aforesaid judgment, we deem it appropriate to overrule the objection raised by the Office of the Tribunal with regard to maintainability of the appeal, to set aside the order, dated 16.03.2015, passed in S.A.IR.No.176 of 2015 and direct the Debts Recovery Tribunal, Hyderabad, to consider the appeal and dispose of the same on merits as expeditiously as possible, preferably within a period of two months from today. The order passed under Section 14 of the Act shall not be enforced for a period of two weeks from today. In the meanwhile, it is open to the petitioners to seek appropriate orders on merits from the Tribunal.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

December 21, 2015

MD

[1] (2013) 9 SCC 620