

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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WRIT PETITION No.24225 of 2015

Between:

Piyush P.Mehta.

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... Petitioner

and

Canara Bank, S.D.Road Branch, Secunderabad,
Rep. by its Authorised Officer & another.

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... Respondents

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DATE OF JUDGMENT PRONOUNCED: 17.08.2015

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SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

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1. Whether Reporters of Local newspapers
Yes/No

may be allowed to see the Judgment ?

2. Whether the copies of judgment may be
Yes/No

marked to Law Reporters/Journals ?

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3. Whether Their Ladyship/Lordship wish to
Yes/No see the fair copy of the judgment ?

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

WRIT PETITION No.24225 of 2015

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ORDER : (Per Justice R.Subhash Reddy)

In this writ petition, the petitioner seeks directions by way of Mandamus, to declare the steps taken by the 1st respondent under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), including filing of Criminal M.P.No.1621 of 2015 on the file of Chief Metropolitan Magistrate, Hyderabad, as illegal.

The 2nd respondent-Company has availed loan facility from the 1st respondent-bank and the petitioner is guarantor for the said loan, who has created equitable mortgage of certain properties to secure the loan. As the 2nd respondent has defaulted an amount of Rs.1,92,90,365/-, the loan account was declared as NPA and after issuing necessary demand notice under Section 13(2) of the SARFAESI Act, symbolic possession is taken

under Section 13(4) of the Act. To take the assistance of Advocate-Commissioner for taking physical possession of property, the 1st respondent-bank has filed Criminal M.P.No.1621 of 2015, which is allowed by the learned Chief Metropolitan Magistrate, Hyderabad, by order dated 16.06.2015, appointing the Advocate-Commissioner and issuing warrant. Questioning the same, this writ petition is filed.

In this writ petition, it is contended by the learned counsel for petitioner that once the symbolic possession of secured asset is taken in exercise of powers under Section 13(4) of the SARFAESI Act, there is no reason or justification for physically dispossessing the petitioner from the secured asset till the sale certificate is issued and registered. In support of his contention, the learned counsel has referred to the judgments of Hon'ble Supreme Court in **Mardia Chemicals Ltd. v. Union of India & others**^[1] and in **M/s.Transcore v. Union of India & another**^[2].

From a perusal of the provision under Section 13(4) of the SARFAESI Act, it is clear that if the borrower fails to discharge his liability in full within the period specified in Section 13(2), the secured creditor may take recourse to one or more of the measures mentioned therein, to recover his secured debt. Section 13(4)(a) empowers the secured creditor to take possession of the secured assets

of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured debt.

Learned counsel for 1st respondent has placed reliance on the provision under Section 13 of the SARFAESI Act, as per which, after receipt of notice under Section 13(2), the borrower is prohibited from transferring by way of sale, lease or otherwise, any of the secured assets referred to in the notice, without prior written consent of the secured creditor.

In view of the aforesaid provisions, we are not in agreement with the submissions made by the learned counsel for petitioner. Once symbolic possession is taken, before going for sale, it is open to the secured creditor to take effective physical possession of the secured asset. It is fairly well settled that a secured possession of property will fetch higher price than the property which is in occupation of the borrower. In that view of the matter, it is not for the petitioner, who is a guarantor, to plead that actual possession of secured asset should not be taken by obtaining orders from the Court, till the sale certificate is issued. The judgments relied on by the learned counsel for petitioner also would not render any assistance in support of his case, in view of the facts and circumstances of the present case.

For the aforesaid reasons, the writ petition is devoid of merit and it is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

17th August 2015
ajr

[\[1\]](#) II (2004) BC 397 (SC)
[\[2\]](#) Appeal (Civil) No.3228 of 2006