

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

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WRIT PETITION No.15985 of 2015

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

In this writ petition, the petitioner has questioned the notice dated 30.05.2015 issued by the Advocate Commissioner to take physical possession of the secured asset pursuant to the orders passed by the learned Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, in Crl.M.P.No.934 of 2014.

The petitioner company has availed the cash credit facilities from the 1st respondent-Bank and committed default in paying the amounts. The 1st respondent-Bank has initiated proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). When the possession notice dated 20.08.2013 was issued under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules'), the petitioner approached the Debts Recovery Tribunal at Visakhapatnam (for short 'the Tribunal'), by filing S.A.No.204 of 2013, challenging the said notice. By order dated 03.09.2013, the Tribunal granted *status quo* subject to payment of 20% of the demanded amount. As evident from the possession notice, outstanding amount at that time was Rs.3,20,38,727/-. Since the petitioner has not complied with the said condition, for taking possession of the secured assets, the Bank authorities have moved the Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, by filing Crl.M.P.No.934 of 2014, in which orders are passed appointing Advocate Commissioner to take possession of item No.3 of the

secured assets i.e., all that piece and parcel of 200 sq. yards of residential plot with single storied building in Plot No.1133, Sy.No.167 Part, 168, 169, Part 176, 177 and 178 Part, Lahari Estates, situated at Pragathi Nagar, Bachupally Village, Kukatpally, Hyderabad.

In this petition, it is contended by learned counsel for the petitioner that though company properties, which are also hypothecated to the 1st respondent Bank, are available, instead of proceeding against such properties, the Bank authorities are proceeding against the residential plot with single storied building as described in the warrant. It is also contended that the petitioner has filed stay application and also an application seeking amendment of the pleadings and the prayer in S.A.No.204 of 2013 filed before the Tribunal and said applications are pending.

As evident from the possession notice issued under Section 8 (1) of the Rules, the outstanding amount is Rs.3,20,38,727/-. Even though the Tribunal has granted *status quo* subject to payment of 20% of the demanded amount, as early as on 03.09.2013, the petitioner has not complied with the said condition and the same resulted in proceeding further as per the provisions of the Act. Except stating that notice is issued to the tenant of the petitioner, no other valid ground is raised. If the secured asset is in possession of the tenant, it is always open to issue notice to the tenant for vacating the premises so as to sell the same to realise the amount due from the petitioner. Merely because an application seeking amendment is pending before the Tribunal, the same is no ground to interfere with the proceedings initiated under the Act. In that view of the matter, we do not find any merit in the writ petition so as to interfere with the impugned notice.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand

closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

09.06.2015

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