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

WRIT PETITION No.22450 of 2015

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ORDER : (Per Justice R.Subhash Reddy)

This writ petition is filed seeking directions by way of Mandamus, to declare the action of 1st respondent-Andhra Bank in proceeding to take possession of the house property of the petitioner bearing Door No.25/14, T.S.No.60/14, Block No.8, Near Saint Philomena School, Norris Colony, Cantonment, Bellary, Karnataka State under Section 14 of the Securitisation and Reconstruction Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), as illegal and arbitrary, and to issue consequential directions to the 1st respondent-Bank not to proceed against the property of the petitioner.

2. The 1st respondent-Andhra Bank, in ordinary course of its business, advanced open cash credit facility of Rs.450 Lakhs during the month of March 2013, to the 2nd respondent for mining business at Bellary. The said cash credit facility was secured by hypothecation of stocks of the 2nd respondent and also by personal guarantees of the petitioner and others. The petitioner has created equitable mortgage of her immovable property bearing Door No.25/14, T.S.No.60/14, Block No.8, Near Saint

Philomena School, Norris Colony, Cantonment, Bellary, Karnataka State and also Plot No.21 in House No.4-11-215/A, Journalist Colony, Jubilee Hills, Hyderabad, belonging to one G.Deepak Reddy.

3. When the petitioner/guarantor and also the 2nd respondent-Company/borrower have committed default in repaying the loan amount, the 1st respondent-Bank classified the account of 2nd respondent as 'non-performing asset' and initiated recovery proceedings under the provisions of the SARFAESI Act. After issuing demand notice under Section 13(2) of the said Act, the 1st respondent-bank has issued possession notice under Section 13(4) of the Act and has taken symbolic possession of the secured asset. Thereafter, the 1st respondent-Bank has obtained orders under Section 14 of the Act from District Magistrate, Bellary on 28.05.2015 for taking physical possession of the secured asset. At that stage, the petitioner, who is a guarantor and mortgaged the house property at Bellary, has filed this writ petition.

4. Mainly, it is the case of the petitioner that the 1st respondent-bank has not followed the procedure prescribed under the SARFAESI Act and the notice under Section 13(2) of the said Act was not served on the petitioner. It is stated in the affidavit filed in support of the writ petition that the 1st respondent-bank has not followed the procedure prescribed under Rule 3(1) of the Security

Interest (Enforcement) Rules, 2002, therefore, it is stated that the steps which are being taken by the 1st respondent-bank in proceeding to take possession of secured asset, are illegal.

5. The Manager of the 1st respondent-Bank has filed counter affidavit. While denying the various allegations made by the petitioner, it is averred in the counter affidavit that in view of remedy available to the petitioner under Section 17 of the SARFAESI Act, this writ petition filed under Article 226 of the Constitution of India, is not maintainable. By further referring to the details of cash credit facility availed by the 2nd respondent and the equitable mortgage of immovable property by the petitioner, it is stated in the counter affidavit that the notice under Section 13(2) of the Act was issued on 01.12.2014 and was sent to the petitioner by registered post but the same was not returned served. Thereafter, the 1st respondent-bank published demand notice in 'Eenadu' and 'The Hindu' newspapers on 13.12.2014, as such, the same is in compliance to the Rules. It is further pleaded that as the 2nd respondent and its guarantors/mortgagors have failed to repay the loan amount of Rs.4,96,45,860-72 ps., the 1st respondent-bank has issued possession notice dated 13.02.2015 as contemplated under Section 13(4) of the Act, taking symbolic possession of the secured asset. It is further stated in the counter affidavit

that the said possession notice was received by the petitioner on 13.02.2015 and possession notice was also published in the news papers of 'Deccan Herald' and 'Praja Vani' on 19.02.2015. In the counter, in clear terms, it is stated that the notice under Section 13(2) was sent by registered post to the address furnished by the petitioner and as the said notice was not returned served, publication was also made in the newspapers, and thus, pleading that the 1st respondent-bank has complied with the requirements as per Rules, prayed for dismissal of the writ petition.

6. Additional counter affidavit is also filed. In the additional counter affidavit, it is stated that the petitioner has not filed any securitization application as stated in the 1st counter. Further, in the additional counter, it is stated that the copy of demand notice under Section 13(2) of the Act was also pasted in the premises of the petitioner on 10.12.2014 before its publication in two newspapers i.e. 'Eenadu' and 'The Hindu' on 13.12.2014. A copy of the photograph showing pasting of notice under Section 13(2) in the premises of the petitioner, is also placed on record.

7. In this writ petition, it is contended by Sri Vedula Srinivas, learned counsel appearing for petitioner that the 1st respondent-bank, without taking any steps for service of notice as per Rule 3 of the Security Interest (Enforcement) Rules, 2002, has proceeded further and

issued possession notice under Section 13(4) of the Act. It is further contended that as the SARFAESI Act is an expropriatory litigation, strict compliance to provisions is required, as such, without serving demand notice as contemplated under Section 13(2), 1st respondent-bank is taking steps to dispossess the petitioner from the subject property, where, the petitioner is residing with her family members.

8. On the other hand, it is contended by Sri M.Narender Reddy, learned Senior Counsel appearing for the 1st respondent-Bank that huge amount of credit facility was availed by the 2nd respondent-Company for business purposes and defaulted in repaying the said loan, as such, the 1st respondent-Bank has initiated proceedings under the SARFAESI Act. It is submitted that though notice was sent to the petitioner by registered post, as the same was not returned served, a copy of notice was also pasted in the premises of petitioner on 10.12.2014, and thereafter, demand notice was also published in two leading newspapers i.e. 'Eenadu' and 'The Hindu'. It is further pleaded that in the affidavit filed in support of the writ petition, the petitioner herself has stated that the demand notice bears the signature of her husband. Thus, the allegation of petitioner that demand notice was not served on her, is not correct. In any event, it is submitted that as the 1st respondent-bank has followed the

procedure contemplated under the Rules by serving the notice under Section 13(2) of the SARFAESI Act, it cannot be said there is violation of the provision contained under Rule 3 of the Rules.

9. In this case, the 2nd respondent-Company is the borrower within the meaning of the SARFAESI Act and the term 'borrower' is defined under Section 2(f) of the said Act. As per Section 2(f), 'borrower' means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by the bank. Thus, it is clear that the person who creates equitable mortgage of property to secure the interest of the bank is also a borrower. Under Section 13(2) of the SARFAESI Act, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice, failing which, the secured creditor shall be entitled to exercise all or any of the rights under Section 13(4). In exercise of powers under sub-section (1) and clause (b) of sub-section (2) of section 38 read with sub-section (4), (10)

and (12) of section 13 of the SARFAESI Act, the Central Government has framed the Rules titled as 'the Security Interest (Enforcement) Rules, 2002. Rule 3 of the said Rules along with proviso, reads as under :

> "**3. <u>Demand notice</u>** : (1) The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission or documents like fax message or electronic mail service:
>
> Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality."

10. In this writ petition, mainly, it is the case of the petitioner that the demand notice issued under Section 13(2) of the SARFAESI Act is not served on the petitioner. In the counter, it is stated that such notice was sent by registered post, but as the same was not returned served, notices were also pasted at the address given by the petitioner, on 10.12.2014, and thereafter, it was published in two newspapers i.e. 'Eenadu' and 'The

Hindu' on 13.12.2014. In the affidavit filed in support of the writ petition, petitioner herself has stated that the demand notice under Section 13(2) bears the signature of her husband, but still, she disputes the same on the ground that on her inquiry with her husband, she has come to know that it was not served on him. When it is stated in the counter affidavit that the demand notice under Section 13(2) was sent by registered post, a presumption arises that it must have been served on the petitioner. It is true that there is no acknowledgement card, but always there is presumption of service on the addressee when a notice is sent by registered post. Apart from the same, the petitioner herself admits that the demand notice contains the signature of her husband. Further, as evident from the counter affidavit and the material placed before this Court, it is clear that the demand notice, before publication in two leading newspapers, was pasted in the address given by the petitioner as per the records. Apart from pasting of notice on 10.12.2014, the demand notice was also published in the newspapers on 13.12.2014, and hence, it cannot be said that the petitioner is not aware of notices. The learned counsel for petitioner Sri Vedula Srinivas has placed reliance on the judgment in the case of **Devinder Singh & others v. State of Punjab & others**[1], wherein, the Hon'ble Supreme Court has held that the provisions of the Land Acquisition Act must be strictly construed, as the

same is an expropriatory Legislation. In the case on hand, this Court is of the opinion that the 1st respondent-bank has strictly followed the procedure contemplated under Rule 3 of the Security Interest (Enforcement) Rules, 2002 for serving the demand notice under Section 13(2) of the SARFAESI Act, and as such, the said judgment would not render any assistance in support of the case of the petitioner.

11. For the aforesaid reasons, we are of the view that there is no merit in this writ petition so as to interdict the proceedings initiated under the SARFAESI Act. The writ petition is accordingly dismissed.

12. However, it is represented by Sri Vedula Srinivas, learned counsel for petitioner that the property in question is a residential house wherein the petitioner is residing, hence, requested to grant some time for vacating the same. In view of the same, and as the respondents have not initiated any steps to auction the secured asset, we direct the respondents to maintain status quo with regard to possession of the property in question for a period of six weeks from today.

Pending miscellaneous applications, if any, shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

7th August 2015
ajr

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[1] (2008) 1 SCC 728