THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.30683 OF 2015

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

This Writ Petition is filed seeking to issue a writ, direction or order especially, in the nature of writ of *Mandamus* to declare the order, dated 18.08.2015, passed by the Chief Metropolitan Magistrate, Hyderabad as illegal and arbitrary, and consequently, to set aside the same or in the alternative, to direct the Debts Recovery Tribunal, Hyderabad (for short, "the D.R.T") to dispose of Securitization Application No.450 of 2015 pending on its file expeditiously.

2. We have heard learned counsel for the petitioner and also the learned Standing Counsel for respondent No.1 Bank.

3. The petitioner claims that he is the purchaser of property situated at Plot bearing Municipal No.8-2-416 in T.S.No.2, Ward 11, Block E, Road No.4, Banjara Hills, which was owned by respondent No.2. He claims that he has entered into an agreement of sale with respondent No.2 and has paid a total consideration of Rs.1,32,00,000/-. On the ground that the said property claimed to have been purchased by the petitioner was mortgaged to respondent No.1 Bank in connection with a loan obtained by respondent No.2, proceedings were initiated by respondent No.1 Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") and a demand notice under Section 13(2) of the SARFAESI Act was issued for Rs.74,00,465/-. Subsequently, when a notice under Section 13(4) of the SARFAESI Act was issued, the petitioner approached the D.R.T., and challenged the same by

way of filing S.A.No.450 of 2015. Pending such application before the D.R.T., respondent No.1 Bank filed Crl.M.P.No.2346 of 2015 under Section 14 of the SARFAESI Act before the Court of the Chief Metropolitan Magistrate, Hyderabad to take physical possession of the property. On 18.08.2015, the learned Magistrate appointed an Advocate Commissioner to take physical possession of the property and directed the warrant to be returnable by 23.10.2015. On 12.09.2015, the Advocate Commissioner issued a notice to respondent No.2 and marked a copy to the petitioner stating to vacate the said property by 27.9.2015. As steps were taken by respondent No.1 Bank for taking possession pursuant to the order, dated 18.08.2015, passed in Crl.M.P.No.2346 of 2015, the present writ petition is filed.

4. Learned counsel for the petitioner submitted that the petitioner has paid substantial amount to respondent No.2 pursuant to the agreement of sale and when notice under Section 13(4) of the SARFAESI Act is challenged before the D.R.T., the petitioner cannot be dispossessed from the application schedule property; that to show *bona fides*, the petitioner is prepared to deposit a reasonable amount till disposal of the aforementioned Securitization Application pending before the D.R.T. and hence, he prays to set aside the order, dated 18.08.2015, in Crl.M.P.No.2346 of 2015.

5. On the other hand, learned Standing Counsel appearing for respondent No.1 Bank submitted that the property, which is being claimed by the petitioner, was not only shown as security for the loan, which is subject matter of the notice issued under Section 13(2) of the SARFAESI Act, but also shown as security for the further loan obtained by respondent No.2.

6. In view of the pendency of S.A.No.450 of 2015 before the D.R.T., it is not desirable to record any finding on merits with regard to the claim of the petitioner. As the petitioner unconditionally came forward to deposit certain amount to protect his possession and also in view of the pendency of the S.A. before the D.R.T., we direct the D.R.T. to dispose of S.A.No.450 of 2015 expeditiously. Further, the petitioner shall not be dispossessed from the property in question in view of the order, dated 18.8.2015, passed in Crl.M.P.No.2346 of 2015 by the Chief Metropolitan Magistrate,

Hyderabad on condition that the petitioner deposits an amount of Rs.35,00,000/- (Rupees thirty five lakhs only) within a period of four (4) weeks from today. It is made clear that the said amount shall be adjusted against the loan amount of respondent No.2 and the petitioner is not entitled for refund of the same. Any such amount deposited by the petitioner shall be subject to the final order to be passed in S.A.No.450 of 2015.

7. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

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JUSTICE R.SUBHASH REDDY

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JUSTICE A.SHANKAR NARAYANA

Date: 07.10.2015

Note:- Furnish C.C. by 09.10.2015.

B/O

AMD

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

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WRIT PETITION No.30683 OF 2015

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Dated: 07.10.2015

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