HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.22287 of 2015

-

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the action of the respondent-Bank in taking physical possession of the residential Flat No.G-4, admeasuring 1475 sft in the Ground Floor of Satguru Apartments Buildings, together with the proportionate undivided share in the land to an extent of 45.00 square yards or 37.62 square meters of land, forming part of premises bearing No.12-13-98, Tarnaka, Secunderabad, through an Advocate-Commissioner in pursuance of the order dated 8.5.2015 in Crl.MP.No.1076 of 2015, passed by the Chief Metropolitan Magistrate, Hyderabad, as arbitrary and illegal.

2. The petitioner has availed loan from the respondent-Bank by mortgaging the residential Flat No.G-4, admeasuring 1475 sft in the Ground Floor of Satguru Apartments Buildings, together with the proportionate undivided share in the land to an extent of 45.00 square yards or 37.62 square meters of land, forming part of premises bearing No.12-13-98, Tarnaka, Secunderabad, as security for the loan amount. As he defaulted in repayment of instalment amount, the respondent-Bank has declared the loan account of the petitioner as Non-performing Asset (NPA) on 28.09.2011 and initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"). When possession notice under Section 13(4) of the SARFAESI Act was issued on

22.10.2013, the petitioner has challenged the same by way of appeal being S.A.No.672 of 2013 before the Debts Recovery Tribunal, Hyderabad. The Tribunal, vide interim order dated 18.11.2013 in I.A.No.3787 of 2013, has stayed all further proceedings pursuant to the possession notice dated 22.10.2013, on condition of the petitioner depositing a sum of Rs.9,00,000/- to the credit of the respondent-Bank in two instalments of Rs.4,50,000/- each, the 1st instalment of which shall be paid within four weeks and the balance shall be paid within a further period of four weeks thereafter. As the petitioner has not complied with the said conditional order, the respondent-Bank has filed an application being Crl.MP.No.1076 of 2015 under Section 14 of the SARFAESI Act, seeking appointment of an Advocate-Commissioner to take physical possession of the subject property. On such application, the learned Chief Metropolitan Magistrate, Hyderabad, by order dated 8.5.2015 in Crl.MP.No.1076 of 2015, has appointed one Sri G. Narayana, as Advocate-Commissioner, authorizing him to take physical possession of the subject property and handover the same to the petitioner therein i.e., the respondent-Bank. Challenging the order dated 8.5.2015, the petitioner has filed the present writ petition.

3. It is submitted by the learned counsel for petitioner that due to the financial stringencies, the petitioner could not comply with the conditional order dated 18.11.2013. He would further submit that the petitioner is using the subject property for residential purpose and if he is dispossessed from the same, he will be put to great hardship.

4. It is not in dispute that the petitioner has not complied with the conditional order dated 18.11.2013 in I.A.No.3787 of 2013 and the appeal being S.A.No.672 of 013 is pending before the Tribunal. As the petitioner has not complied with the conditional order, the respondent-Bank has filed an application being Crl.MP.No.1076 of 2015 seeking appointment of an Advocate-Commissioner to take physical possession of the subject property, which was allowed.

5. There is no legal flaw pointed out in the impugned order

dated 8.5.2015 passed by the Chief Metropolitan Magistrate, Hyderabad, in exercise of powers under Section 14 of the SARFAESI Act. So far as the Securisation Appeal being S.A.No.672 of 2013 is concerned, the petitioner has not complied with the conditional order dated 18.11.2013. If the petitioner wants extension of time to comply the said order, it is for him to approach the respondent-Bank with appropriate application. In view of pendency of proceedings before the Tribunal in S.A.No.672 of 2013, we do not find any illegality so as to interfere with the impugned order dated 8.5.2015 in Crl.MP.No.1076 of 2015, passed by the Chief Metropolitan Magistrate, Hyderabad.

6. For the aforesaid reasons, this writ petition is devoid of merits and is accordingly dismissed, at the admission stage. However, if the petitioner wants to settle the loan account of the respondent-Bank, this order will not preclude him either to approach the Tribunal or the respondent-Bank seeking extension of time for payment of the amount due. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

30.07.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.22287 of 2015

30.07.2015

Msr