

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

WRIT PETITION No.19984 of 2015

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

This writ petition is filed by the petitioners seeking *Mandamus* to declare the action of the 1st respondent-Bank in threatening to dispossess and take over possession of the land admeasuring Ac.1.50 cents along with Godown, residential house and RCC Poultry Sheds, situated in R.S.No.9/2 of Kuchipudi Village, Movva Mandal, Krishna District, without there being any orders of the Debts Recovery Tribunal, Visakhapatnam, in O.A.Nos.397 and 398 of 2014, as arbitrary and illegal.

2. The 2nd petitioner has obtained loan to a tune of Rs.50,00,000/- from the 1st respondent-Bank, to which the 1st petitioner stood as guarantor by mortgaging the land property. As the petitioners have defaulted in repayment of loan amount, the 1st respondent-Bank has 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') and the property of the petitioners was sought to be sold by issuing notice dated 6.5.2014 under Section 13(2) of the SARFAESI Act, demanding to pay Rs.67,12,604/-. As the demanded amount

was not paid within the stipulated time, further steps were initiated to take possession of the mortgaged property i.e., land admeasuring Ac.1.50 cents along with Godown, residential house and RCC Poultry Sheds situated in R.S.No.9/2 of Kuchipudi Village, Movva Mandal, Krishna District. Hence, the present writ petition.

3. On the last occasion, at request of the learned Standing Counsel for the 1st respondent-Bank to get instructions, the matter was adjourned.

4. Today, it is brought to our notice by the learned Standing Counsel for the 1st respondent-Bank that when notices of sale dated 25.8.2014 were issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for brevity "the Rules"), the petitioners have approached this Court by way of filing W.P.No.27917 of 2014. The said writ petition was disposed of along with W.P.No.27903 of 2014, by order dated 18.9.2014, permitting the petitioners to deposit 50% of the outstanding amount due to the Bank within a period of six weeks from the date of the said order and the remaining outstanding amount within a period of six weeks thereafter. A copy of the order dated 18.9.2014 in W.P.Nos.27917 and 27903 of 2014, is produced before this Court.

5. When this Court has pointed out about non-mentioning of the fact of filing W.P.No.27917 of 2014, learned counsel for the petitioners merely says that due to ignorance of the petitioners, the said fact could not be mentioned in the

affidavit filed in support of the writ petition.

6. Having heard Sri K. Vijaya Raju, learned counsel for the petitioners and Sri B.S. Prasad, learned Standing Counsel for the 1st respondent-Bank, we have perused the material placed on record.

7. In this writ petition, the petitioners have not only suppressed the fact of filing W.P.No.27917 of 2014, but also simply filed the present writ petition seeking *Mandamus* to declare the action of the 1st respondent in threatening to dispossess and take over possession of the subject land, without questioning the demand notice dated 6.5.2014.

8. It is to be noticed that the petitioners are the persons, who have obtained a loan of Rs.50,00,000/- from the 1st respondent Bank and defaulted in repayment of the loan amount. Having questioned the earlier notice dated 25.8.2014, issued under Rule 8(6) of the Rules by way of filing W.P.No.27917 of 2014, the petitioners ought to have mentioned all the particulars in the affidavit filed in support of the writ petition. As the present writ petition is filed by suppressing the material fact of earlier filing W.P.No.27917 of 2014, we deem that it is a fit case to be dismissed with exemplary costs.

9. Accordingly, this writ petition is dismissed, at the admission stage, by imposing costs of Rs.50,000/- (Rupees fifty thousand only) on the petitioners to be paid to the A.P. State Legal Services Authority, Hyderabad. As a sequel,

miscellaneous petitions pending, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

09.07.2015.

Msr

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