HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>WRIT PETITION No.14992 of 2015</u>

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<u>ORDER</u>: (Per Justice R. Subhash Reddy)

This Writ Petition is filed with the prayer which reads as under:

"For the reasons stated in the accompanying affidavit the petitioners pray that this Hon'ble Court may be pleased to issue a writ order or direction more particularly one in the nature of "Writ of Mandamus" declaring:

a. The orders of the 6^{th} Respondent Appellate Tribunal dated 19.05.2015 in Application No.157 of 2015 in Tender No.88 of 2015 as illegal, null, void, unconstitutional and

b. The orders of the Honourable Debts Recovery Tribunal in S.A.I.R.No.843 of 2014 dated 27.04.2015 insofar as it is against the petitioners, as illegal, arbitrary and in violation of Section 31(j) of SARFAESI Act, 2002 and in violation of Article 14 of the Constitution of India;

c. And to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Alleging that petitioners have defaulted in payment of certain amounts, notice under Section 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") was issued for approximately an amount of Rs.21 crores.

3. It is the case of the petitioner that, out of the total loan amount of Rs.264,50,00,000/-, which was sanctioned and disbursed by way of term loan and working capital by the respondents, only an

amount of Rs.20,29,96,292/- is payable to the respondents. As such, it is the case of the petitioners that, in view of the provision under Section 31(j) of the Act, proceedings initiated under the Act are illegal and arbitrary.

4. The 1st respondent has issued possession notice under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and approached the Court of Chief Metropolitan Magistrate, Hyderabad vide Crl.M.P.No.3676 of 2014 under Section 14 of the Act, seeking delivery of physical possession of the residential house belonging to the 3rd petitioner. The learned Chief Metropolitan Magistrate by order 24.10.2014 allowed the Crl.M.P., appointed an Advocate Commissioner to take physical possession of the property and to handover the same to the 1st respondent. Petitioners approached the Debts Recovery Tribunal, Hyderabad, vide S.A.I.R.No.843 of 2014, questioning the possession notice and the orders/warrant issued by the Chief Metropolitan Magistrate, Hyderabad in Crl.M.P.No.3676 of 2014. Initially, on 20.11.2014, the Debts Recovery Tribunal, Hyderabad, has passed orders granting stay of all further proceedings. It is the case of the petitioners that the matter was heard at length on 05.12.2014 by the Debts Recovery Tribunal, Hyderabad, but the said appeal is not disposed of for want of time, as the Presiding Officer was to retire, as such, orders dated 27.04.2015 were passed modifying the earlier interim orders with a direction to the petitioners herein to deposit 20% of the amount claimed by the respondent-banks in the possession notice dated 21.03.2014, out of which 10% was to be deposited within three weeks and balance 10% within three weeks thereafter. Against the said orders, petitioners filed W.P.No.14375 of 2015 and the said Writ Petition was dismissed by order dated 14.05.2015 on the ground of availability of alternative remedy. This Court has extended the time granted by the Debts Recovery Tribunal, Hyderabad for payment of 20% of the amount. The petitioners approached the Debts Recovery Appellate Tribunal, Kolkata and also claimed exemption from making pre-deposit as per the provision under Section 18 of the Act. The Appellate Tribunal, by

order dated 19.05.2015, held that petitioners are required to deposit at least 25% of the sum which is claimed in the notice issued under Section 13(2) of the Act, which comes to Rs.5,25,17,844/-.

5. Heard learned counsel for the petitioners and also the learned counsel for the respondents.

6. It is to be noticed that when possession notice is given, on challenge, the Debts Recovery Tribunal, Hyderabad, at first instance, passed absolute interim orders without imposing any condition.

   A perusal of the docket proceedings also show that at one point of time, application filed before the Debts Recovery Tribunal itself was heard, but somehow the said application could not be disposed of. Though it is the case of the petitioners that, in view of the provision Section 31(j) of the Act, no proceedings can be initiated under the Act, as the debt amount is less than 20% of the principal amount, but, the same is a matter which is required to be considered by the Debts Recovery Tribunal while passing final orders.

7. Having regard to the totality of the circumstances and as the matter is pending before the Debts Recovery Tribunal itself, without going into the validity of the order dated 19.05.2015, passed by the Debts Recovery Appellate Tribunal, Kolkata, this Writ Petition is disposed of with a direction to the Debts Recovery Tribunal, Hyderabad, to dispose of the appeal filed by the petitioners in S.A.I.R.No.843 of 2014, as expeditiously as possible, preferably within a period of three months from today. Further, respondents are directed not to take any steps pursuant to the possession notice dated 21.03.2014 and the orders passed/warrant issued in Crl.M.P.No.3676 of 2014, by the Chief Metropolitan Magistrate, Hyderabad, till the disposal of the appeal by the Debts Recovery Tribunal, Hyderabad, on condition that the petitioners deposit a sum of Rs.2 crores within a period of four weeks from today. It is made clear that if the said sum is not deposited within the time stipulated above, it is open to the

respondents to take further steps in accordance with law. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Writ Petition stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

5th June 2015

MRR