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

<u>WRIT PETITION No.24926 of 2015</u>

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

This Writ Petition is filed seeking Mandamus, declaring the action of the 2nd respondent, in collecting a sum of Rs.3,60,046/- from the petitioner as charges and expenses payable to the enforcement agency, as violative of Section 13(7) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") and Articles 14 and 19(1)(g) of the Constitution of India.

2. The petitioner is a company which is engaged in real-estate business. The petitioner availed loan facility from the 2nd respondent-Bank to the extent of Rs.2 crores for the purpose of constructing residential complex at Petbasheerabad, Hyderabad. The project site, for which purpose the loan was availed, was given as security by creating equitable mortgage apart from other securities. When the petitioner defaulted in repayment of the loan, proceedings were initiated under the Act. When possession notice was given on 15.10.2014 under Section 13(4) of the Act, petitioner approached the Debts Recovery Tribunal, Hyderabad by filing S.A.No.767 of 2014. At initial stage, after filing S.A., before the said Tribunal, when a statement was made by the petitioner that it is going to pay the entire debt due to the 2nd respondent-Bank on or before 31.12.2014, recovery proceedings were postponed. However, when the petitioner has failed to clear off the debt as stated before the Debts Tribunal, proceedings were initiated and notice prior to sale was issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 and physical possession of the

secured asset was taken on 19.03.2015 by obtaining orders in Crl.M.P.No.135 of 2015 on the file of the Chief Metropolitan Magistrate, Cyberabad, R.R. District, under Section 14 of the Act.

3. Subsequently, the petitioner has cleared off the entire debt. The

2nd respondent has collected certain charges which are incurred by it on the recovery agent by name M/s. Tirumala Financial Services and Recovery Agency.

4. In this Writ Petition, it is the allegation of the petitioner that 2nd respondent-Bank has not incurred any expenses as pleaded and as such collection of Rs.3,60,046/- towards alleged expenses and charges is illegal and violative of the provision under Section 13(7) of the Act.

5. Counter-affidavit and additional counter-affidavits are filed by the 2nd respondent-Bank, wherein, while denying the various allegations made by the petitioner, it is stated that in view of remedy available to the petitioner under Section 17(1) of the Act, the present petition filed under Article 226 is not maintainable. It is further stated that the authorized officer of the 2nd respondent-Bank, in exercise of powers under Section 13(7) of the Act and Rule 8(3) of the Rules, appointed the security agency, viz., M/s. Tirumala Financial Services and Recovery Agency which is one of the empanelled agencies of the 2nd respondent-Bank for realization of debts in respect of the secured assets. It is pleaded that the

2nd respondent-Bank has incurred expenditure for publication of the notice in daily newspapers and also in engaging the services of the recovery agency for conducting the proceedings under the Act. It is further pleaded that as per the circular instructions of the

Bank, recovery agency is entitled for 5 per cent of the amount recovered, but the petitioner himself negotiated with the recovery agency and the recovery agency has accepted 2 per cent of the amount recovered as against 5 per cent of the amount recovered; as such, petitioner is not entitled for the amount which is paid to the recovery agency, i.e. Rs.3,60,046/-.

6. When the respondents have initiated securitization proceedings and issued notice under Section 13(4) of the Act, petitioner approached the Debts Recovery Tribunal, Hyderabad and filed S.A.No.767 of 2014 and the same is pending. The present charges which are in dispute are also arising out of the proceedings initiated under the Act. If the petitioner is aggrieved by the action of the respondents in recovering the amount of Rs.3,60,046/-, petitioner as well can question the same by taking steps for amendment of the prayer in the S.A., which is pending before the Debts Recovery Tribunal, Hyderabad or may file fresh S.A., questioning collection of such charges. In view of the remedy available to the petitioner under Section 17 of the Act, we are not inclined to examine the claim made by the petitioner at this stage and no relief as sought by the petitioner can be granted in this petition under Article 226 of the Constitution of India.

7. The Writ Petition is therefore disposed of granting liberty to the petitioner to approach the Debts Recovery Tribunal, Hyderabad, for redressal of its grievance. 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

2nd September, 2015
MRR