

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

WRIT PETITION No.31281 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* declaring the action of respondent Nos.1 and 4 in fixing the date of execution of warrant as 27.9.2015 as illegal and contrary to the order, dated 27.8.2015, passed in Securitization Application No.390 of 2015 on the file of the Debts Recovery Tribunal, Hyderabad (for short, "the D.R.T") and consequently, to give a direction restraining the respondents from executing the warrant on 27.9.2015 and from interfering with the day to day activities of the petitioner.

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 respondent No.2 Company availed loan from respondent No.1 – The Punjab National Bank, Hyderabad and he stood as a guarantor and handed over the title deeds pertaining to his house situated at Chikkadpally, Hyderabad to respondent No.3, who is the Promoter-cum-Director of respondent No.2 company. When measures were taken 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"), respondent No.3 has filed S.A.No.325 of 2015 before the D.R.T., and the same is pending adjudication. The petitioner filed S.A.No.390 of 2015 before the D.R.T., and the same is also pending. It is stated that in S.A.No.325 of 2015, an interim order of *status quo* was passed and in S.A.No.390 of 2015 also, an interim order was passed by the D.R.T.,

permitting respondent No.1 Bank to proceed with the sale, but directed it not to confirm the sale till the next date of hearing. Respondent No.1 Bank approached the Court of the Chief Metropolitan Magistrate, Nampally, Hyderabad under Section 14 of the SARFAESI Act by filing Crl.M.P.No.2032 of 2015 for appointment of an Advocate Commissioner to take the physical possession of the schedule property wherein the learned Magistrate vide order, dated 31.7.2015, appointed respondent No.4 – Advocate Commissioner to take physical possession of the scheduled mentioned property and to hand over the same to respondent No.1 Bank and directed to return the warrant on 09.10.2015. Respondent No.4 issued notice to the petitioner and to his tenants by fixing the date of execution of the said warrant as 27.9.2015. Hence, the petitioner filed the present writ petition.

4. It is stated that S.A.Nos.325 and 390 of 2015, which are filed by respondent No.3 and the petitioner respectively, are pending. As there is an interim order of *status quo* in S.A.No.325 of 2015 and an interim order to proceed with the sale, but not to confirm the sale till the next date of hearing in S.A.No.390 of 2015, possession of the property in question of the petitioner cannot be taken contrary to the said interim orders. At the same time, the measures taken by respondent No.1 Bank under the SARFAESI Act are the matters under challenge. In view of the pendency of the aforesaid Securitization Applications before the D.R.T., there is no need to go into the validity of such proceedings in this writ petition. The warrant, dated 31.7.2015, issued under Section 14 of the SARFAESI Act, is to be executed subject to further orders to be passed by the D.R.T., in the aforesaid Securitization Applications.

5. As it is stated that both the aforesaid Securitization Applications are posted for hearing, we dispose of the writ petition directing respondent Nos.1 and 4 not to take any steps for dispossession of the petitioner from the property in question contrary to the interim orders passed in the Securitization Applications. Further, we direct the D.R.T., to dispose of S.A.Nos.325 and 390 of 2015 pending on its file as expeditiously as possible, preferably, within a period of two (2) months from the date of receipt of a copy of this order, and respondent Nos.1 and 4 shall take further steps subject to the result of the said Securitization Applications. There shall be no order as to costs.

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

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

Date: 02.12.2015

Note:- Furnish C.C. by 08.12.2015.

B/O

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THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

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Dated: 02.12.2015

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