

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

WRIT PETITION No.32511 of 2015

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

This writ petition is filed seeking a direction by way of Mandamus to declare the action of the respondents in taking physical possession of the following mortgaged movable and immovable properties and also issuing notice dated 29.09.2015 by the 2nd respondent, as illegal and arbitrary:

“Primary: C.C. – Hypotication of Stocks, book debts and all chargeable current assets of the company and TL – Fixed Assets of the company acquired out of Bank Finance.

(1) All that the part and parcel of the Plot No.67, admeasuring 267 sq.yds in Survey No.305, 306, 308 and 312/part situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Smt.Kottapalli Nagamamani, vide Doc.No.15785/2003 dated 10-12-2003 registered at the Sub-Registrar Office at Medichal and bounded by North: Plot No.68, South: Plot No.66, East: Plot No.71 and West:60' Wide Road.

(2) All that the part and parcel of the Plot No.68, admeasuring 267 sq.yds in Survey No.305, 306 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Smt.Kottapalli Nagamamani, vide Doc.No.15784/2003 dated 10.12.2003 registered at the sub-Registrar Office at Medichal and bounded by North: 40' Wide Road, South: Plot No.67, East: Plot No.70 and West: Plot No.68.

Description of Immovable properties:

(1) All that the part and parcel of the Plot No.69, admeasuring 266.66 sq.yds in Survey No.305, 306, 308/part and 312 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Smt.Kottapalli Nagamamani, vide Doc.No.12071/2003 dated 27.09.2003 registered at the sub-Registrar Office at Medichal and bounded by North: 40' wide Road, South: Plot No.67, East: Plot No.70 and West: Plot No.68.

(2) All that the part and parcel of the Plot No.70, admeasuring 266.66 sq.yds or 222.92 sq.mts in Survey No.305, 306, 308/part and 312 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Smt.Kottapalli Nagamamani, vide Doc.No.12072/2003 dated 27.09.2003 registered at the sub-Registrar Office at Medichal and bounded by North: 40' wide Road, South: Plot No.71, East: 30' wide Road and West: Plot No.69.

(3) All that the part and parcel of the Plot No.71, admeasuring 266.66 sq.yds or 222.92 sq.mts in Survey No.305, 306, 308/part and 312 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Sri K.Trinaga Raju, vide Doc.No.9226//2004 dated 7.6.2004 registered at the sub-Registrar Office at Medichal and bounded by North: Plot No.70, South: Plot No.72, East: 30' Wide Road and West: Plot No.67.

(4) All that the part and parcel of the Plot No.72, admeasuring 266.66 sq.yds or 222.92 sq. meters in Survey No.305, 306, 308/part and 312 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal, R.R.district belonging to Sri K. Trinaga Raju, vide Doc.No.12073/2003 dated 27.09.2003 registered at the sub-Registrar Office at Medichal and bounded by North: Plot No.71, South: Plot No.73, East: 30' wide Road and West: Plot No.66.

(5) All that the part and parcel of the Plot No.73, admeasuring 266.66 sq.yds or 222.92 sq.mts in Survey No.305, 306, 308/part and 312 situated at Block No.2, Sri Venkateswara Co-operative Industrial Estates, Jeedimetla (v), Quthbullapur Mandal,

R.R.district belonging to Sri K.Trinaga Raju, vide Doc.No.6397/2001 dated 28.08.2001 registered at the sub-Registrar Office at Medichal and bounded by North: Plot No.72, South: Plot No.74, East: 30' wide Road and West: Plot No.65.”

(6) Plant & Machinery pertaining to the existing Unit situated on Plot No.72 and 73 as above mentioned.”

The 1st petitioner is a Pharmaceutical Company and the 2nd and the 3rd petitioners are its Managing Director and Director respectively. The petitioners have availed cash credit facilities, apart from term loan, car loan etc., from the 1st respondent Bank and committed default in repayment. In view of the security interest created over the mortgaged property in favour of the respondent Bank, the respondent Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, ‘the Act’) and issued demand notice, dated 29.12.2014, demanding an amount of Rs.2,95,16,253/- due as on 28.12.2014 and further interest therefrom. Thereafter possession notice under Section 13 (4) of the Act was issued on 04.05.2015.

As per the letter, dated 31.08.2015, issued by the respondent-Bank to the petitioners, the accounts of the petitioners have become NPA only on 24.08.2015. It is contended that subsequent to 24.08.2015, neither the demand notice nor the possession notice as contemplated under Sections 13 (2) and 13 (4) of the Act was issued. At the same time, the respondents have approached the Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, by filing Crl.M.P.No.641 of 2015, for taking possession of the secured assets. Based on the order passed by the Chief Metropolitan Magistrate, the impugned notice, dated 29.09.2015, is issued for taking possession of the subject movable and immovable properties.

On instructions, it is contended by Sri B.S.Prasad, learned counsel for the respondent-Bank, that the letter, dated 31.08.2015, is issued inadvertently by the New Officer and, as such, there is no illegality in the proceedings. It is further submitted that, in any event, the accounts of the petitioners have been declared NPA on 24.08.2015 and requested to dispose of the writ petition, permitting the respondent Bank to initiate fresh proceedings and take steps in accordance with law.

It is not in dispute that the letter, dated 31.08.2015, is addressed by the respondent Bank. It is true that prior to issuance of the said letter, demand notice under Section 13 (2) of the Act and the possession notice under Section 13 (4) of the Act were issued. It is also clear from the averments made in the affidavit filed in support of the petition that even subsequent to issuance of demand notice and possession notice, the petitioners have paid some amounts and they have also made a representation on 26.08.2015, in which it is stated that even after initiating the proceedings under the Act, they have paid some amounts and requested to grant further time. It is clear from the record, particularly from the letter dated 31.08.2015, that the accounts of the petitioners were declared NPA on 24.08.2015. As no notices are issued under Sections 13 (2) and 13 (4) of the Act subsequent to 24.08.2015, no steps can be taken to dispossess the petitioners without following due process of law. Even the impugned notice, dated 29.09.2015, issued for taking possession of the subject property pursuant to the orders passed in CrI.M.P.No.641 of 2015 by the Chief Metropolitan Magistrate, is also liable to be set aside, in view of the fact that no steps were taken under the provisions of the Act subsequent to 24.08.2015.

For the aforesaid reasons, we allow the writ petition setting aside the impugned notice and directing the respondents not to dispossess the petitioners pursuant to the impugned notice dated 29.09.2015. Further this order will not preclude the petitioners from

making representation for regularization of their accounts and also the respondents from initiating fresh proceedings in accordance with law to recover the amounts due from the petitioners.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

06.10.2015

v v