

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

WRIT PETITION No.38974 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioner is the tenant of the premises whose owner (3rd respondent herein) had mortgaged the building to the 1st respondent-Bank as security for the loan obtained by him. As the borrower defaulted in repayment of the loan, the 1st respondent-Bank proceeded to take action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"). Notice under Section 13(2) of the SARFAESI Act was issued and, thereafter, the 1st respondent-Bank filed CrI.M.P.No.932 of 2014 before the Metropolitan Magistrate under Section 14 of the SARFAESI Act. On an order being passed, directing the Advocate-Commissioner to take possession of the property, the petitioner has invoked the jurisdiction of this Court. By its order dated 18.12.2014, this Court, while ordering Notice Before Admission, granted interim stay on condition that the petitioner deposited Rs.40,00,000/- within a period of four(4) weeks from the date of receipt of a copy of the order. The petitioner deposited Rs.40,00,000/- with the 1st respondent.

In paragraphs 9 and 10 of the affidavit, filed in support of the writ petition, the petitioner undertakes to vacate the premises by 30.04.2015. In view of the undertaking given by the petitioner, to voluntarily vacate the subject premises by 30.04.2015, we consider it appropriate to direct the 1st respondent-Bank not to take physical possession of the subject property before 30.04.2015. It is made clear that, in case the petitioner fails to vacate the premises by 30.04.2015, not only would they

be proceeded against for violation of the undertaking given to this Court, the 1st respondent-Bank would also be entitled thereafter to take action in accordance with law to evict the petitioner from the subject premises.

Pursuant to the interim order passed by this Court on 18.12.2014, the petitioner has deposited Rs.40,00,000/- with the 1st respondent-Bank. While Sri Vedula Srinivas, learned counsel for the petitioner, would contend that, on the petitioner vacating the premises on 30.04.2015, they are entitled for refund of Rs.40,00,000/- deposited by them, as they have no connection with the borrower or the loan obtained by him from the 1st respondent-Bank, Smt. V.Dyumani, learned Standing Counsel for the 1st respondent-Bank would submit that, in terms of the agreement entered into between the 1st respondent-Bank and the 3rd respondent-borrower, and in terms of the undertaking given by the petitioner to the 1st respondent-Bank dated 25.05.2012, the petitioner had agreed to deposit the monthly rent payable to the 3rd respondent to the credit of the loan account with the 1st respondent-Bank.

The 1st respondent-Bank was prevented from taking action against the petitioner only after the interim order was passed by this Court on 18.12.2014. In view of the undertaking given by the petitioner to vacate the premises by 30.04.2015, ends of justice would be met if the 1st respondent-Bank is directed to refund Rs.40,00,000/- deposited by the petitioner, on their vacating the subject premises on 30.04.2015, after deducting the monthly rent payable by them to the 3rd respondent from December 2014 till April 2015. The amount so deducted shall be kept in deposit. In case, the entire amount due from the 3rd respondent, along with other expenses incurred by the 1st

respondent-Bank, is recovered on the sale of the secured asset, the amount kept in deposit shall then be refunded to the petitioner herein. It is made clear that the 1st respondent-Bank is not precluded from forthwith taking action to put the subject property to sale. The only fetter placed on the 1st respondent-Bank, as a result of the order now passed by this Court, is that the petitioner shall not be evicted from the subject property before 30.04.2015. The 1st respondent-Bank shall complete the proceedings to put the property to sale at the earliest and, in any event, not later than 31.10.2015.

The writ petition stands disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

18th February 2015.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 18.02.2015

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