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

WRIT PETITION No.27176 of 2015

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

The petitioner has filed this writ petition challenging the possession notice dated 01.08.2015 issued by the respondent-Bank in exercise of powers under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") r/w. Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity "the Rules") and the subsequent proceedings in Crl.M.P.No.54 of 2015 on the file of the Chief Judicial Magistrate, Adilabad.

2. Initially, the petitioner, which is a Cotton Industry, has availed term loan and cash credit facility from the respondent-Bank and the same was renewed by way of Letter of Sanction dated 23.09.2013. As the petitioner has defaulted in repaying the loan amount, the loan account of the petitioner was declared as Non-performing Asset (NPA) and the respondent-Bank has initiated proceedings under the provisions of the SARFAESI Act. After issuing demand notice dated 01.06.2015 under Section 13(2) of the SARFAESI Act, demanding to pay an amount of Rs.10,31,09,463.32 ps., which was due as on the said date, the impugned possession

notice dated 01.08.2015 is issued Section 13(4) of the SARFAESI Act r/w. Rule 8(1) of the Rules, for taking possession of the secured assets. The respondent-Bank has also filed Crl.M.P.No.54 of 2015 on the file of the Chief Judicial Magistrate, Adilabad, under Section 14 of the SARFAESI Act. Pursuant to the said application, the Advocate-Commissioner has issued notice dated 24.08.2015 to the petitioner to deliver possession of the secured assets within a period of three days. Aggrieved by the same, the present writ petition is filed.

3. Sri G.K. Deshpande, learned counsel for the petitioner, mainly contends that the very action of the respondent-Bank in declaring the petitioner's loan account as NPA is contrary to the guidelines notified by the Reserve Bank o f India. The learned counsel would further contend that though the petitioner has submitted explanation to the demand notice, even without answering the same in proper perspective, the respondent-Bank has proceeded to take further steps by issuing possession notice under Section 13(4) of the SARFAESI Act r/w. Rule 8(1) of the Rules. In support of his contention, the learned counsel has placed reliance on a judgment of the A p e x Court in the case of MARDIA CHEMICALS LIMITED vs. UNION OF INDIA[1].

4. On the other hand, Sri Nurullah Baig, learned Standing Counsel for the respondent-Bank, submits that the proceedings dated 27.3.2015 is not a Letter of Sanction of the amounts. In fact, the loan amount was sanctioned earlier, but

the same was renewed on 27.3.2015 on the assurance given by the petitioner to pay the overdues. It is further submitted that inspite of giving several opportunities, as the loan amount was not paid by the petitioner, the respondent-Bank was constrained to issue the impugned possession notice for taking possession of the secured assets and also filed an application in Crl.M.P.No.54 of 2015 before the Chief Judicial Magistrate, Adilabad, under Section 14 of the SARFAESI Act. The learned Standing Counsel would further submit that the declaration of the petitioner’s loan account as NPA is in conformity with the guidelines notified by the Reserve Bank of India.

5. Having heard learned counsel for the parties, we have perused the material placed on record.

6. From the material on record, it is clear that as against the possession notice dated 1.8.2015 issued under Section 13(4) of the SARFAESI Act r/w. Rule 8(1) of the Rules, the petitioner has approached the Debts Recovery Tribunal, Hyderabad, by way of filing S.A.No.382 of 2015, under Section 17(1) of the SARFAESI Act, wherein the respondent-Bank has filed counter affidavit and the matter was heard and reserved on 20.8.2015, but orders were not pronounced.

7. It is represented that there is no Presiding Officer for the Debts Recovery Tribunal, Hyderabad, and only incharge arrangements were made, before whom the matter was argued.

8. In view of the pendency of S.A.No.382 of 2015 filed by the petitioner before the Debts Recovery Tribunal, Hyderabad, it is not desirable to record any finding on various contentions and pleas raised by the petitioner. It is for the Debts Recovery Tribunal, Hyderabad, to consider all the contentions and pleas raised by both the parties and pass appropriate orders.

9. As it is represented that there is no regular Presiding Officer for the Tribunal and the incharge Officer has heard and reserved the matter on 20.8.2015, we deem it appropriate to dispose of the writ petition directing the Debts Recovery Tribunal, Hyderabad, to dispose of S.A.No.382 of 2015 filed by the petitioner as expeditiously as possible, preferably within a period of three months from today. The respondent-Bank is directed not to take any coercive steps to take possession of the secured assets of the petitioner till disposal of S.A.No.382 of 2015, on condition of the petitioner depositing an amount of Rs.1.00 Crore (Rupees one crore) within a period of four weeks from today. It is made clear that if the petitioner fails to deposit the amount of Rs.1.00 Crore within the stipulated period, it is open to the respondent-Bank to take further steps in accordance with law.

10. Subject to the above directions, this writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

26.08.2015.
Msr

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

WRIT PETITION No.27176 of 2015

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[1] (2004) 4 SCC 311