

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

**WRIT PETITION No.25209 of 2015**

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

This writ petition is filed by the petitioner challenging the order vide (M) D.Dis.No.1275/2015/C8, dated 27.07.2015, passed by the 1<sup>st</sup> respondent-Collector and District Magistrate, Visakhapatnam District, in exercise of the powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") to take possession of the secured assets of the petitioner.

2. The 7<sup>th</sup> respondent has borrowed loan amount from the 3<sup>rd</sup> respondent-Andhra Bank and defaulted in repayment of the same. At the instance of the 3<sup>rd</sup> respondent-Bank, earlier when proceedings were initiated and notice dated 20.12.2013 was issued under Section 13(4) of the SARFAESI Act, the petitioner has approached this Court by way of filing W.P.No.39214 of 2013 and this Court dismissed the said writ petition by order dated 03.06.2014, granting liberty to the petitioner to approach the Debts Recovery Tribunal by way of filing an appeal under Section 17(1) of the SARFAESI Act. Review WPMP.No.30780 of 2014 filed against the said order dated 3.6.2014 in W.P.No.39214 of 2013 also ended in dismissal, by order dated 31.10.2014. Thereafter, to take possession of the secured assets, the Authorised Officer and

Chief Manager of the 4<sup>th</sup> respondent-Bank has moved an application before the 1<sup>st</sup> respondent-Collector and District Magistrate, Visakhapatnam, under Section 14 of the SARFAESI Act, basing on which, the said authority has passed the impugned order dated 27.7.2015.

3. Learned counsel for the petitioner contends that though the properties mentioned in the scheduled of properties in the impugned order dated 27.7.2015 are agricultural lands and are exempted from taking possession under Section 31(i) of the SARFAESI Act, inspite of the same, the respondent-Bank is taking steps to dispossess the petitioner from the agricultural land and auction the same to recover the loan amount. The learned counsel would further contend that as there is no Presiding Officer for the Debts Recovery Tribunal, Visakhapatnam, the petitioner is constrained to approach this Court. It is further contended that even according to the petitioner, he is neither a borrower nor a guarantor and there is a title dispute with regard to the properties mentioned in the schedule of properties. The learned counsel also contends that in view of the exemption provided under Section 31(i) of the SARFAESI Act, the properties mentioned in the schedule of properties, which are agricultural lands, are not liable for sale to recover the loan amount obtained by the 7<sup>th</sup> respondent.

4. On the other hand, Sri V. Raghu, learned Standing Counsel, appearing for the respondent-Bank, submits that though there is no Presiding Officer for the Debts Recovery Tribunal, Visakhapatnam, there is an incharge officer, who is conducting the proceedings periodically and the next date of

sitting is scheduled to be held on 17<sup>th</sup> and 18<sup>th</sup> of August, 2015.

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

6. It is to be noticed that, earlier when the petitioner has filed W.P.No.39214 of 2013 challenging the notice dated 20.12.2013 issued under Section 13(4) of the SARFAESI Act, in view of the alternative remedy available to the petitioner under Section 17(1) of the SARFAESI Act, this Court dismissed the said writ petition by order dated 3.6.2014. Even the review application, being Review WPMP.No.30780 of 2014 filed against the said order dated 3.6.2014, also ended in dismissal, by order dated 31.10.2014.

7. Further, having regard to the factual disputes raised by the petitioner regarding title of the properties mentioned in the schedule of properties in the impugned order, we are of the view that the petitioner can even avail the remedy by way of filing an appeal before the Debts Recovery Tribunal under Section 17(1) of the SARFAESI Act, against the impugned order dated 27.7.2015.

8. As it is stated that the next sitting of the incharge Officer is scheduled on 17<sup>th</sup> and 18<sup>th</sup> of August, 2015, we deem it appropriate to dispose of the writ petition directing the respondent-Bank not to dispossess the petitioner from the schedule of properties mentioned in the impugned order dated 27.7.2015 for a period of two weeks from today. In the meanwhile, it is open to the petitioner to approach the Debts Recovery Tribunal and obtain appropriate orders.

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

---

JUSTICE R. SUBHASH REDDY

---

JUSTICE A.SHANKAR NARAYANA

11.08.2015.

Msr

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

WRIT PETITION No.25209 of 2015

11.08.2015  
Msr