HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.5321 OF 2016

ORDER: (Per NRR,J)

The petitioner sought for a Writ of Mandamus to declare the action of the respondents in trying to take over the physical possession of the property bearing H.No.26-51/B, Sy.No.870/1, Chanukyapuri, Malkajgiri Mandal, Ranga Reddy district, pursuant to the orders passed by the learned Chief Metropolitan Magistrate, Ranga Reddy in Crl.M.P.No.595 of 2015 on 08.09.2015 as illegal and contrary to Section 14 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

2. It appears the husband of the petitioner herein has availed certain financial assistance from the 2nd respondent bank. There was a default committed in repaying the said loan amount. Consequently, the 2nd respondent bank has initiated measures for securitization of the loan for realizing the debt due and outstanding. As a part of such measures, the learned Chief Metropolitan Magistrate of Ranga Reddy district has been approached by the 2nd respondent bank by instituting the Crl.M.P.No.595 of 2015 for taking possession of the secured asset. It is in this backdrop, the present Writ Petition is instituted.

3. With a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith, the Parliament has enacted the Act. Various expressions found mentioned in the enactment are defined under Section 2(1) of the SARFAESI Act. The expression 'Bank' has been defined under Section 2(1)(c) of the SARFAESI Act in the following terms:

"Bank" means--
(i) a banking company; or
(ii) a corresponding new bank; or
(iii) the State Bank of India; or
(iv) a subsidiary bank; or
(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"

4. Similarly the expression 'Borrower' has been assigned a very exhaustive definition under Section 2(1)(f) of the SARFAESI Act which runs as under:

"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;"

5. The expression 'Financial Asset' has been defined in Section 2(1)(l) of the SARFAESI Act, as under:

"Financial Asset" means debt or receivables and includes--
(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
(iii) a mortgage, charge, hypothecation or pledge of movable property; or
(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
(vi) any financial assistance;

6. In that view of the matter, the 2nd respondent being a multi-state Co-operative Society answers the description of the bank and the petitioner herein, having created the mortgage in favour of the 2nd respondent by way of deposit of the title deeds answers description of the borrower by herself. The asset so mortgaged to the 2nd respondent also answers the description of secured asset. Section 13 of the SARFAESI Act, has provided for measures for enforcement of the security interest of the financial institution which has rendered assistance to its borrowers. Under Sub Section 2 of Section 13 of the SARFAESI Act, a demand notice is required to be raised demanding liquidation of the outstanding liability within a period of 60 days. If the debt remains unpaid and the liability not liquidated completely within the stipulated period, the measures provided under Sub Section 4 of Section 13 of the SARFAESI Act, can be initiated. When such measure was to take over the secured asset so as to enable the creditor to sell it away later on, for the purpose of realizing the debt due to it under Section 14 of the SARFAESI Act, to avoid any possible difficulties for the secured creditor in taking possession of the immovable properties, a provision is made empowering the learned Chief Metropolitan Magistrate or the District Magistrate in whose jurisdiction the secured asset is lying to extend help to the secured creditor in taking over the possession.

7. Accordingly, the 2nd respondent bank seems to have approached the learned Chief Metropolitan Magistrate, L.B.Nagar, Ranga Reddy district, as the secured asset was admittedly lying within its territorial jurisdiction. That application was ordered by the learned Magistrate on 08.09.2015. We are now informed by Sri Thoom Srinivas, learned counsel for the petitioner that the secured asset is the only residential premises available with the petitioner herein where she along with two other school going children is staying. Sri T. Srinivas, the learned counsel would submit that if a reasonable period

of time is granted to the petitioner, she will liquidate the entire outstanding liability. He would further submit that in the last week, the petitioner has repaid to the credit of the loan account a sum of Rs.2,00,000/-(Rupees two lakhs only).

8. In the given facts and circumstances, where this Court has no right of any manner to interfere with the right of the secured creditor in taking measures under Sub Section 4 of the Section 13 of the SARFAESI Act and also in view of the provisions contained under Section 1 of the Section 14 of the SARFAESI Act, we cannot interfere with the right of the 2nd respondent bank to secure the loan account. However, in view of the undertaking of the petitioner and also in view of the fact that two school going children are also staying in the said residential accommodation, we consider that ends of justice would be better served by keeping in abeyance the operation of the order passed by the learned Chief Metropolitan Magistrate on 08.09.2015 in Crl.M.P.No.595 of 2015 till 31.05.2016. It shall be open to the petitioner herein to liquidate the liability before this period expires, by depositing a sum not less than Rs.2,00,000/-(Rupees two lakhs only) before end of each month namely March, April and May, 2016, however, on or before 31.05.2016, the entire liability has to be liquidated or a fresh financial arrangement of re-schedulement of the loan with the 2nd respondent bank should be worked out. Any default committed in payment of the aforementioned deposit of Rs.2,00,000/-(Rupees two lakhs only) a minimum each month, the 2nd respondent bank would be at liberty to take necessary fallow up action of giving effect to the order dated 08.09.2015 passed by the learned Chief Metropolitan Magistrate, without any recourse to this Court and the learned Advocate-Commissioner appointed by the learned Chief Metropolitan Magistrate, upon a memo being filed by the 2nd respondent bank that the petitioner has committed default in payment

of money as directed by or may proceed further and take possession of the asset and file the necessary report before the learned Chief Metropolitan Magistrate but not otherwise, that is, when the writ petitioner deposits a sum of not less than Rs.2,00,000/-(Rupees two lakhs only) before end of the months of March and April and also liquidates the entire liability latest by May,2016 or in the alternative enters into a fresh round of liquidation for liability, the 2nd respondent bank in the re-scheduling the loan.

9. In the result, the Writ Petition is disposed of.

10. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 23.02.2016.
VVR