

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No.23416 of 2016

18.07.2016

Between:

Dr.Syed Shamsuddin Babar

..Petitioner

And

The Authorised Officer,
State Bank of Hyderabad and another

..Respondents

Counsel for the petitioner: Mr.Abu Akram

Counsel for the respondents: --

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *mandamus* to declare the notice dated 31.03.2016, issued by respondent No.1 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), taking possession of the petitioner's property under Section 13(4) of the SARFAESI Act on 06.06.2016 and the sale notice, dated 08.07.2016, without fixing the date of sale, as illegal and arbitrary.

2. We have heard Mr.Abu Akram, learned counsel for the petitioner and perused the record.

3. The only ground on which the petitioner has filed this writ petition is that as per the statement of account, dated 12.07.2016, the outstanding balance is Rs.2,46,208.15ps, which is less than 20% of the total loan amount payable by the petitioner and therefore, the SARFAESI Act has no application in view of Section 31(j) thereof.

4. It is not in dispute that measures under Section 13(4) of the SARFAESI Act were taken after completing the procedure under Section 13(2) of the said Act and even sale notice was also issued on 08.07.2016. If the petitioner is not liable for action under the SARFAESI Act, he is expected to approach the respondents with a representation raising all the pleas that have been raised in this writ petition. The learned counsel for the petitioner has stated that his client has personally approached the respondents and made oral representation. In our opinion, such a plea cannot be countenanced as the petitioner has been dealing with a public financial institution - a nationalized bank and he is expected to correspond with them in writing. Except the *ipse dixit* of the petitioner that he has approached the respondents, no evidence in support thereof has been filed. In our opinion, the respondents, being nationalized bank, have no reason to not consider the plea of the petitioner, if he has truly approached and

apprised them of the position both relating to the fact and the law as sought to be pleaded in this writ petition. In the absence of any evidence in support of the plea of the petitioner that he has indeed approached the respondents, we are not inclined to entertain this writ petition. Instead, the petitioner is left free to approach the respondents with the written representation and raise all the legally sustainable objections. In the event, the respondents do not positively respond in favour of the petitioner, he shall be free to avail the remedy of appeal under Section 17 of the SARFAESI Act.

5. Subject to the liberty given to the petitioner as above, the Writ Petition is dismissed.

6. As a sequel to dismissal of the writ petition, W.P.M.P.No.28850 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

18th July, 2016
GHN