

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.3910 of 2016

ORDER : *(Per Hon'ble Sri Justice A.Shankar Narayana)*

The petitioner - Bank, which is the secured creditor, filed the instant writ petition seeking certiorari to call for the records connected with the order, dated 02.02.2016, in S.A.No.282 of 2014 passed by the Debts Recovery Tribunal, Visakhapatnam (for short 'the Tribunal'), the 3rd respondent herein, and to quash or set aside the same by declaring it as illegal and arbitrary.

Respondent No.1- borrower preferred the aforesaid S.A challenging the auction notice, dated 15.10.2014, by which the Bank put the property to auction on 18.11.2014, and the Tribunal has quashed the sale certificate issued pursuant to the auction held on 18.11.2014 by giving certain directions. One of such directions is that the Bank shall handover the physical possession of the properties (shops) to respondent No.1 herein immediately by removing the locks/seals and that in case the Bank fails to handover the physical possession of the property within seven days from the receipt of the order, respondent No.1 was permitted to take back physical possession of their property, after giving notice to the Bank's Authorized Officer informing about the said order by mentioning the date and time on which respondent No.1

intends to re-enter by breaking open the lock. Aggrieved by the same, the instant writ petition is filed on the ground that the period of seven days mentioned in the order would expire by today.

Heard learned counsel for the parties and perused the record.

We are of the view that under Section 18 of the SARFAESI Act, an efficacious remedy of appeal is provided before the Appellate Tribunal. Therefore, we intend to direct the petitioner to approach the Appellate Tribunal for redressal of its grievance. However, keeping in view the directions given by the Debts Recovery Tribunal to take back possession by breaking open the lock by fixing the time schedule of seven days, we are inclined to direct the parties to maintain *status quo* for a period of two weeks, giving liberty to the petitioner to approach the Appellate Tribunal and obtain appropriate orders.

Sometime after passing the above order, Sri M.Narender Reddy, learned Senior Counsel appearing for respondent No.1, represents that this morning, respondent No.1 has broke open the lock and took possession of the property.

Since the order passed by the Tribunal clearly discloses that seven days' time was granted from the receipt of the order and the learned counsel for petitioner Bank represents that the Bank has received the order on 03.02.2016 and the seventh day would expire by today, respondent No.1 was not authorized to break open the lock and take possession today.

Having regard to the said circumstances, we direct respondent No.1 to re-deliver possession of the property to the Bank's Authorised Officer forthwith. Further, on appeal being filed, it is open to the Appellate Tribunal to pass appropriate orders on its own merits.

Subject to the above, the writ petition stands disposed of.
No order as to costs.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

10.02.2016
v v/v a