

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION NO.23372 OF 2016

DATED:02-08-2016

Between:

Smt. Cheruku Krishnaveni ... Petitioner

And

State Bank of India,
Stressed Assets Recovery Branch,
2nd Floor, RTC Building,
Commuters' Amenity Centre,
Koti, Hyderabad
Rep. by its Authorised Officer
and another ... Respondents

COUNSEL FOR THE PETITIONER: Mr. Pasala Ponna Rao

COUNSEL FOR THE RESPONDENTS: -

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THE COURT MADE THE FOLLOWING:

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

This writ petition is filed by the borrower under a loan transaction with the respondents, with the grievance that the respondents have not been responding to the objections filed by her in response to notice dt.17.5.2016 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). The petitioner pleaded that in the year 1996 she has obtained a housing loan of Rs.5,00,000/-, that she has repaid certain part of the loan amount, that as she failed to pay some of the instalments she was served with a notice dt.19.11.2013 wherein it is stated that in the Lok Adalat scheduled to be conducted by the District Legal Services Authority in connection with National Lok Adalat on 23.11.2013, the respondents have agreed to settle the case for a sum of Rs.3,35,806.38 ps., outstanding as on 30.9.2013 + accrued interest and that she was requested to attend the office of the Stressed Assets Recovery Branch, Nampally, Hyderabad, and give her consent for one time settlement for the aforementioned amount. Evidently the petitioner has not responded to the said notice. The respondents have subsequently issued notice dt.17.5.2016 under Section 13(2) of the SARFAESI Act wherein the petitioner was called upon to pay a sum of Rs.31,65,868/- with further interest and incidental expenses within 60 days of the notice. In response to the said notice, the petitioner caused a legal notice issued on 21.6.2016 wherein she has disputed the quantum of the amount demanded under the notice issued under Section 13(2) of the SARFAESI Act. The grievance of the petitioner is that in spite of the said reply sent by her, the respondents have not communicated their response as envisaged under Section

13(3A) of the Act.

On 18.7.2016, the learned counsel representing Mr. M. Srikanth Reddy, learned Standing Counsel for the State Bank of India, has taken notice for the respondents and sought time for filing counter affidavit. Today, the learned counsel representing Mr. Ramanna Dora requested for an adjournment. Having regard to the nature of the case and the manner in which we are proposing to dispose of the case, we find it unnecessary to adjourn the case further.

Sub-sections (3) and (3A) of Section 13 of the SARFAESI Act read as under:

“13. Enforcement of security interest.- (1)

(2)

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A.”

As noted hereinbefore, the plea of the petitioner, which has not been controverted so far by the respondents, is that though she has got a reply sent through her Lawyer on 21.6.2016 disputing the quantum of the alleged liability, the respondents have not responded as per sub-section (3A) of Section 13 of the Act. Since no measures appeared to have been initiated under Section 13(4) of the Act so far, we deem it appropriate that respondent No.1 considers the reply stated to have been sent by the petitioner through her Lawyer on 21.6.2016 and send

a communication in writing in the event it is not accepting the objections of the petitioner. While doing so, it shall assign reasons for non-acceptance of the objections as envisaged under sub-section (3A) of Section 13 of the Act. If such communication was already sent to the petitioner, a copy thereof shall be sent to her, as her counsel at the hearing has submitted that so far his client has not received any such communication. Till this process is completed, the respondents shall not initiate any measures under Section 13(4) of the Act. In the event the respondents reject the objections of the petitioner, she shall be free to avail such remedies as available to her under the provisions of the SARFAESI Act.

Subject to the above directions, the writ petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P. No..28787 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

A.V. SETHA SAI, J

02-08-2016

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