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

WRIT PETITION No.5754 OF 2016

ORDER: (Per NRR,J)

The petitioner herein challenges the notice of sale delivered by the respondent bank proposing to liquidate the secured asset.

2. The petitioner herein has availed financial assistance towards Housing Loan in the year 2010 from the respondent bank in a sum of Rs.12,50,000/-(Rupees twelve lakhs fifty thousand only) which was sanctioned to them on 26.07.2010. The loan amount together with interest is required to be repaid in 180 monthly installments spread over a period of 15 years. This apart an overdraft was also sanctioned by the respondent bank for a sum of Rs.4,00,000/-(Rupees four lakhs only) on 27.07.2011. As a security for these two transactions, the property in the form of a flat (Flat No.203, Sai Krishna Enclave, H.No.42-775/35 (Old No.42-35), Andalnagar, Moula-Ali, Malkajgiri Mandal, Ranga Reddy District), has been mortgaged to the respondent bank. However, default was committed by the petitioner in repaying the debts. Consequently, the respondent bank has invoked the provision contained under Section 13 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') after declaring the loan accounts as non-performing asset. A notice of demand was drawn under Sub Section 2 of Section13 of the SARFAESI Act on 11.01.2013 demanding the petitioner herein to liquidate the liability of Rs.9,78,552.48 (Rupees nine lakh seventy eight thousand five hundred and fifty two rupees forty eight paise only) which was outstanding but however, the petitioner has not moved in the matter. Hence, the respondent bank has taken possession of the secured asset on 18.02.2015 in accordance with the Sub Section 4 of the

Section 13 of the SARFAESI Act. Therefore, the respondent bank has now proposed to liquidate the said asset by putting it to sale. It is in that backdrop, the present writ petition is filed, questioning the notice delivered to the petitioner on 18.02.2015 about the prospects of the secured asset being put to sale.

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. The respondent bank answers the description of the bank and the petitioner herein is a borrower and the mortgage created by the petitioner answers the description of the secured asset.

7. Even after a demand notice is drawn under Sub Section 2 of Section 13 of the SARFAESI Act, providing the petitioner to liquidate the debt as on 11.01.2013, the respondent bank has taken more than two years time to take possession of the secured asset under Sub Section 4 of Section 13 of the SARFAESI Act and they took possession of the secured asset only on 18.02.2015 and again one more year has also elapsed thereafter. We, therefore, find no merits in this writ petition and the relief prayed for therein cannot be granted. But however, the learned counsel for the petitioner Sri K.Buchi Babu would submit that if reasonable time is granted to the petitioner, the petitioner is willing to liquidate the entire liability by scouting for a prospective purchaser of the asset on her own. In those state of circumstances, we consider that it would be appropriate, as ends of justice would be better served, to provide the petitioner time upto 30.03.2016 to liquidate the entire liability to the respondent bank, failing which the respondent bank is at liberty to proceed further by

putting the secured asset to sale or dispose of otherwise and then adjust the proceeds of such sale fully to the outstanding liability.

8. In the result, the Writ Petition is disposed of. No costs.

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

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 25.02.2016.
VVR