HON'BLE SRI JUSTICE R.KANTHA RAO
and
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P.No.12578 of 2016

ORDER: (***Per Hon'ble Dr. Justice B.Siva Sankara Rao***)

The writ petitioner is the borrower under Section 2(1)(f) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'the Act'). For the default committed by him in liquidation of the secured debt to the secured creditor bank, the bank having classified his account as non-performing asset as per Section 2(o) of the Act, having issued demand notice under Section 13 (2) of the Act and also possession notice under Section 13 (4) of the Act, to take physical possession, initiated proceedings under Section 14 of the Act.

As per the order dated 11.12.2012 of the Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore, SPSR Nellore District, in C.F.No.219 of 2012, Advocate Commissioner by name Sri P.Sanjay Kumar was appointed to hand over physical possession of the schedule property to the bank to proceed with further security measures.

Impugning said order of the Chief Judicial Magistrate, the petitioner preferred S.A.No.348 of 2012 before the Debt Recovery Tribunal (DRT), Visakhapatnam, under Section 12 of the Act and the same is still pending.

While stood thus, the bank approached the Collector-cum-District Magistrate, under Section 14 of the Act to take physical possession of the property and obtained order to deliver physical possession to the bank by the Tahsildar concerned.

After said order passed by the Collector-cum-District Magistrate, in RC.D1/2888/2015, dated 19.6.2015, the petitioner when approached by representation dated 17.07.2015, the District Magistrate passed further order dated 20.08.2015 in R.C.No.D1/2888/2015 by keeping the order dated 19.06.2015 in abeyance. Later there was a letter from the Tahsildar in pursuance of which, the District Collector, Nellore, issued further order modifying the order dated 20.08.2015 in the same RC.D1/2888/2015, which was on 18.2.2016 stating that S.A.No.348 of 2012 is not pending before the DRT as per the enquiry and thereby, the Tahsildar pursuant to the order dated 19.6.2015 can proceed to take possession of the property and hand over the same to the secured creditor-bank.

The sum and substance of the contention of the learned counsel for the petitioner is that once the SA filed against the order of the Chief Judicial Magistrate is pending, unless the same is withdrawn or set aside, fresh order could not have been obtained by the bank from the District Magistrate. The learned counsel placed reliance on the latest full bench expression in *TR Jewellery vs State Bank of India, Vedayapalem Branch, Nellore and another*[1].

In fact, it is interpreted by the full bench that the Chief Metropolitan Magistrate and the Chief Judicial Magistrate are at equivalent and the Chief Metropolitan Magistrate and Chief Judicial Magistrate are having the concurrent jurisdiction. Once such is the case, the order passed by the Chief Judicial Magistrate under Section 14 of the Act for taking physical possession by bank through Advocate Commissioner itself is sustainable. Once the order is sustainable the subsequent order passed by the District Collector dated 19.6.2015 to enforce the same by the impugned order dated 18.2.2016 is unsustainable, though both have concurrent jurisdiction to approach any one and not both of them by the creditor-bank.

Learned Standing Counsel for the respondent-Bank from the above, submits that the bank proceeded before the District Magistrate under the assumption that the earlier order passed by the Chief Judicial Magistrate no way survives. In fact, once the full bench of this court answered the issue, same is binding on the Debt Recovery Tribunal to dispose of the SA No.348 of 2012, as per the full bench expression, as expeditiously as possible.

Having regard to the above, the order passed by the District Magistrate, Nellore is kept in abeyance for three months from today, with a direction for early disposal of SA No.348 of 2012, pending before the DRT, Visakhapatnam, at any cost within three months from today, as the bank is prevented; by virtue of the pendency of the proceedings, to take up further securitization measures to bring the property to sale. It is needless to say, subject to result of the SA No.348 of 2012, in case the order of Chief Judicial Magistrate is validated, to proceed to take physical possession as per the order; and in case it is set aside, then to take physical possession through the Tahsildar as per order of the District Collector, dated 19.06.2015 to read with further order dated 18.02.2016, the bank is at liberty to take further securitization measures to bring the property to sale to realize the secured debt.

Accordingly, the Writ Petition is disposed of. There is no order as to costs. Miscellaneous petitions pending if any, in this writ petition, stand closed.

R.KANTHA RAO, J

Dr. B. SIVA SANKARA RAO, J

19th April, 2016
rkk

[1] **2015 Law Suit (Hyd) 803**