

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION No. 21498 of 2016

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ORDER: (*Per VRS,J*)

The Banks, at whose instance the Chief Metropolitan Magistrate, Hyderabad, 5th respondent herein, passed an order under Section 14 of the SARFAESI Act, 2002, have come up with the present writ petition challenging the action of the 5th respondent in entertaining an application at the instance of the borrower, after passing an order for possession.

2. Heard Mr. Ambadipudi Satyanarayana, learned counsel for the petitioners, and Mr. C.V.Mohan Reddy, learned senior counsel appearing for the respondents 1 to 4.

3. On an application filed by the secured creditors, who are the petitioners herein and in CrI.M.P.No. 3849 of 2015, the 5th respondent passed an order, dated 29.01.2016, directing the issue of a warrant for possession. Thereafter, the 1st respondent herein, who is

the borrower, filed an application in Crl.M.P.No.1013 of 2016 praying for the dismissal of the application filed by the secured creditors under Section 14. This application has been entertained by the 5th respondent and notice ordered. Aggrieved by the same, the Banks are before us.

4. The question as to whether the borrower can take out such an application, after a warrant for possession is issued under Section 14, is no longer *res integra*. A Bench of this Court has already held in ***Phoenix Arc Private Limited Vs. The Court of the Chief Metropolitan Magistrate and others*** (W.P.No.25645 of 2015, dated 24.06.2016) that the Chief Metropolitan Magistrate has no power to recall his order and take up for hearing the application filed at the instance of the borrower. Normally, a criminal Court except the High Court does not have the power of review. If at all an order under Section 14 is passed, the only remedy open to the borrower or the persons in possession is to challenge such an order before the appropriate forum and not to go back before the Chief Metropolitan Magistrate.

5. Therefore, the Writ Petition is allowed and the proceedings in Crl.M.P.No.1013 of 2016 are set aside. It

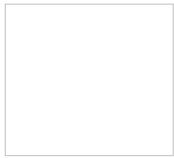
will be open to the respondents 1 to 4 to work out their remedies, in accordance with law.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

8th August, 2016
cbs



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