[1] **HON'BLE SRI JUSTICE R.KANTHA RAO**
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.13908 of 2016

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

The petitioner is the borrower as defined under Section 2(f) of the SARFAESI Act, 2002 (for short 'the Act') and the 1st respondent is the secured creditor, as defined under Section 2(zd) of the Act. The petitioner availed the financial assistance from the bank and committed default in payment and the bank classified the account as non-performing asset, as per Section 2(o) of the Act and initiated securitization measures to recover secured debt against the secured asset/security interest. Undoubtedly from the wording of Section 13(1) read with Section 13(8) of the Act, the provisions of the Transfer of Property Act, notwithstanding anything contained in Section 69 or 69-A are applicable. This is to say also from the expression of the apex court in '***Mathulal vs. Keshar Bai***', the secured debtor, who is borrower, is entitled to liquidate the debt at any time by any means before sale by public auction is continued and sale certificate after registration is issued by transferring the secured property (asset) in recognition of the right of the borrower to liquidate before such transfer of the security asset. Once the petitioner, who claims entered private negotiations with a third party and wants to pay the entire amount due to the bank, the bank is bound to accept, as the very securitization measures are for realization of the debt due to it, needless to say even any other financial assistance rendered by the bank with any right of lien it got that also can be recovered and but for that, the moment the debt is liquidated the bank has to return the title deeds in deposit to the borrower so as to finalize the sale transaction he enters with a third party.

2. Having regard to the above, the writ petition is disposed of by directing the petitioner and 1st respondent as follows:

The moment the petitioner pays the secured debt due to the bank covered by the security interest, and even any other debt due to it from the borrower that also can recover and when paid, the bank shall return the title deeds of the borrower in deposit with the bank by obtaining proper acknowledgment from the borrower and also by issuing no due certificate to the borrower. There is no order as to costs. Miscellaneous petitions, if any, in this writ petition, shall closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

Date: 22.04.2016
Note: Furnish CC by 25.04.2016
(BO)
BSS

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

URGENT

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Writ Petition No.13908 of 2016
(*per Hon'ble Dr.Justice B.Siva Sankara Rao*)

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Date: 22.04.2016

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[1] AIR 1971 SC 310