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

WRIT PETITION No. 33216 OF 2015

O R D E R: ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

This Writ Petition is instituted on the premises that the respondent bank is not justified in proposing to take possession of the secured asset and hence, sought for a writ of mandamus for declaring such an action as illegal.

It appears, the petitioners own an immovable property comprising of house bearing No. 1-1-5/E/1 in Survey No. 1181/E, admeasuring Ac.0.17 guntas situated at Tandur to Kodangal Road, Kodangal Village and Mandal, Mahabubnagar District. The petitioners have availed a housing loan in a sum of Rs.16,40,000/- from the respondent bank and as per the financial arrangement arrived at by and between the parties, each month the petitioners are required to repay an amount of Rs.11,600/- to the bank. It appears, the E.M.Is. were paid without any default for certain period and consequently, a further sum of Rs. 5 lacs has been advanced by the respondent bank during February 2010. Subsequently, the E.M.Is. have not been paid by the petitioners promptly. Hence, the loan account has been declared by the respondent bank as 'non-performing asset'. Hence, it started initiating the action under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act').

Section 13 of the Act, which dealt with Enforcement of Security Interest, would set out that any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act. Thus, the SARFAESI Act is a special piece of legislation made by the Parliament for achieving a special objective of securing the enforcement of the security interest of the secured creditor. That is the reason why a special provision is created in sub-section (1) of Section

13 of the SARFAESI Act by making it clear that the security interest created in favour of any secured creditor can be got enforced without the intervention of the Court. The intention of the Parliament is so very clear that it wanted to address the malady of the default committed by the borrowers resulting in getting into the very vitals of the secured creditor and more particularly, before financial institutions including those in the banking sector. Under sub-section (2), the secured creditor by delivering a notice, in writing, to any borrower whose liability remained unpaid, can call upon to discharge in full such liabilities within 60 days. Even after the receipt of such a notice delivered under sub-section (2) of Section 13, if borrower does not honour the commitment by discharging full the liability and thus fails to do so, sub-section (4) empowered the secured creditor to take recourse to one or the other of the measures provided there under to recover his secured debt.

Therefore, in view of the prevailing legal regime, when once a notice was issued by the secured creditor under sub-section (2) of Section 13 of the Act, by providing 60-days time to liquidate the outstanding liability, any failure to liquidate the same within the said period empowers the secured creditor to initiate further steps in accordance with sub-section (4) of Section 13 of the Act. One of the measures provided under sub-section (4) is to take possession of the secured asset and also manage the same or transfer or sell it away for the purpose of realizing the outstanding debt due. Therefore, there is no justification whatsoever for the petitioners to seek a writ of mandamus to restrain the respondent bank from taking possession of the secured asset. Hence, the relief as prayed for in the above Writ Petition is not capable of being granted by this Court, particularly when the respondent bank is acting in accordance with the special piece of legislation ushered in for realization of the secured assets.

It is imperative that every financial institution is required to recover the monies lent by them in quick time and in accordance with the terms and conditions subject to which the financial assistance has been rendered by it. Otherwise, the very vitals of such financial institutions will be exposed to irreparable damage and risk. Hence, we do not see no justification whatsoever to entertain this Writ Petition.

But however, we are conscious of the fact that given some little time, the borrowers, particularly those who are hailing from rural areas, would be in a position to liquidate their liability. The credit facilities available in the private sector are so usurious that it will leave no chance whatsoever for the debtor to get out of any such debt trap. It is, in fact, to address this gravely iniquitous position, the public financial institutions, as a measure of policy, have been encouraged by the governments to grant loans on liberal terms, so that the deficit in the infrastructure can be filled-in to a certain extent.

Keeping the above principles in our mind and also simultaneously to protect the interests of the respondent bank, we dispose of this Writ Petition, subject to the following terms:

1) The petitioners shall deposit a sum of Rs.1 lac on or before 29.02.2016 to the loan account(s) maintained by them with the respondent bank.
2) They shall also deposit a further sum of not less than Rs. 2 lacs on or before 30.03.2016.
3) The balance amount shall also be liquidated on or before 30.04.2016.
4) In case the petitioners seek any reconciliation of the account, they shall draw a detailed representation containing the data relating to payments made to the loan account, vouched by the necessary proof of payment in that regard. Upon receipt of any such representation from the petitioners, the respondent bank will examine the same and if found necessary, may reconcile the account appropriately. If, on the other hand, no such reconciliation is required to be undertaken, the said fact may be intimated duly enclosing a copy of statement of account

reflecting latest outstanding liability and upon such intimation, the petitioners shall liquidate the same as per the time schedule specified above.

5) In case the petitioners commit default in any one of these conditions specified hereinabove, it shall be open to the respondent bank to confirm the sale of the secured asset undertaken by it, without any further reference to this Court, but not otherwise.

There shall be no order as to costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

17th February 2016

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