

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.14839 of 2016

ORDER: *(per Hon'ble Sri Justice R.Kantha Rao)*

Heard Sri Vedula Venkata Ramana, learned senior counsel on behalf of Sri Sharad Sanghi, learned counsel for the petitioner.

2. This writ petition is filed to declare the orders passed by the Chief Metropolitan Magistrate, Hyderabad dated 05.02.2016 in CrI.M.P.No.202 of 2016 appointing an Advocate Commissioner to take the physical possession of the schedule property as without jurisdiction and the provisions of the SARFAESI Act, 2002 (for short 'the Act') has no application to the 2nd respondent-M/s Diwan Housing Finance Corporation Ltd.

3. Learned senior counsel gave up the second contention on the ground that subsequently, there was a notification extending the provisions of the Act to the 2nd respondent-Diwan Housing Finance Corporation.

4. Originally, the 2nd respondent-secured creditor approached the Chief Metropolitan Magistrate, Hyderabad and obtained an order under Section 14 of the Act, to take possession of the secured asset and to hand over the same to the secured creditor. This order was passed on 05.02.2016. However, possession could not be taken within the time stipulated in the order. When the 2nd respondent-secured creditor approached the Additional Chief Metropolitan Magistrate, who was full additional charge (FAC) of the post of Chief Metropolitan Magistrate, during the latter's leave period, an order impugned dated 04.04.2016 was passed by the Additional Chief Metropolitan

Magistrate, extending the operation of the earlier order passed by the Chief Metropolitan Magistrate, till 03.06.2016.

5. The argument of the learned senior counsel is that the Chief Metropolitan Magistrate is the *persona designata* and the same Magistrate has to pass the order extending its operation, but the Additional Chief Metropolitan Magistrate, who was in FAC, cannot extend the order. Learned senior counsel invited our attention to the provisions of Section 14 of the Act and also the judgments in '*Manjudevi R.Somani vs. Union of India*'^[1], '*Sundaram BNP Paribas Home Finance Ltd., vs. State of Kerala*'^[2], '*Aseena vs. Sub-Divisional Magistrate, Palakkad*'^[3], and '*Chellaperumal vs. The Authorized Officer*'^[4].

6. We have gone through the above judgments relied upon by the learned senior counsel carefully. However, the above judgments show that Chief Metropolitan Magistrate cannot delegate the powers. Here no such delegation is made when the Chief Metropolitan Magistrate was on leave and the Additional Chief Metropolitan Magistrate was in FAC of the court. Further Section 17(2) of the Cr.P.C., clearly lays down that the High Court may appoint any Metropolitan Magistrate to be an Additional Chief Metropolitan Magistrate and such Magistrate shall have all or any of the powers of a Chief Metropolitan Magistrate under the Code or under any other law for the time being in force as the High court may direct. Therefore, we have not in acceptance with the argument of the learned senior counsel that the Additional Chief Metropolitan Magistrate, who was holding FAC, cannot pass the order.

7. Having regard to the facts and circumstances case and for the reasons stated above, we do not find any merit in the writ petition and consequently, the writ petition is dismissed at the stage of

admission. The petitioner, however, may invoke the other remedies, if any, available to him under law. There is no order as to costs. Pending miscellaneous applications if any, in this writ petition shall stand closed.

V.RAMASUBRAMANIAN, J

R.KANTHA RAO, J

Date: 27.04.2016
BSS

HON’BLE SRI JUSTICE V.RAMASUBRAMANIAN
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Date: 27.04.2016

- [1] AIR 2013 Guj.242
- [2] AIR 2009 Ker. 85
- [3] AIR 2009 Ker.1
- [4] AIR 2014 (NOC) 574 (Cal.)