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

WRIT PETITION No. 11641 OF 2016

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

This Writ Petition has been filed seeking a writ of mandamus for declaring the action of the 1st respondent, the Authorized Officer, Andhra Bank, L.B. Nagar Branch, Warangal in issuing notices under sub-section (2) of Section 13 as well as under sub-section (4) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, as bad in law.

At the very outset, we need to point out that the demand notice issued under sub-section (2) of Section 13 of the SARFAESI Act offers an altogether independent cause of action to the one which has been initiated under sub-section (4) of Section 13. Therefore, the petitioners have clubbed together two different causes of action and instituted this Writ Petition.

The 1st respondent has already been represented by the learned counsel, who has accepted notice on behalf of Respondents 1 and 2 and the remaining two respondents, namely the District Collector and the Commissioner of Police, Warangal, being formal parties, they may not be really necessary to put on notice before the Writ Petition itself is disposed of.

There is no dispute that the petitioners answer the description of 'borrower' as defined in Section 2(1)(f), while the 2nd respondent answers the definition of 'bank' as defined in Section 2(1)(c) of the SARFAESI Act. We are also satisfied that the petitioners answer the description of 'default' committed by them and 'secured asset' created by them as defined in clauses (j) and (zc) of sub-section (1) of Section

2 of the Act. Hence, there is every justification in the 2nd respondent treating the loan account of the petitioners as a 'non-performing asset'. Once a loan account is declared as a 'non-performing asset', the Act, under Section 13, has provided for measures for securitization of such a non-performing loan account to be taken. Therefore, in principle, we cannot find anything improper or illegal with regard to the action initiated by Respondents 1 and 2 under sub-section (2) of Section 13 of the SARFAESI Act raising a demand to liquidate the whole of the liability. Since the petitioners have ignored to respond to the said demand notice and did not either liquidate the entire outstanding loan amount or taken any steps by depositing a substantial portion of the outstanding liability and then, entering into a fresh arrangement with the 2nd respondent for re-scheduling the loan account, Respondents 1 and 2 are, hence, justified in initiating the follow-up action provided for under sub-section (4) of Section 13 of the SARFAESI Act.

We have also perused the order passed by the Collector & District Magistrate, Warangal under sub-section (1) of Section 14, on 27.02.2016. We are not able to find anything illegal or improper about it either.

Now, the learned counsel for the petitioners would urge that given 30 days time to the petitioners, they are very anxious to liquidate the entire liability and protect their immovable property over which security interest has been created in favour of the 2nd respondent bank. Since every mortgagor is entitled to protect and redeem the mortgaged property till such time transfer of title over it takes place in accordance with law and also in view of the specific provision contained under sub-section (8) of Section 13 enabling any such borrower to pay up the entire liability together with the incidental expenses and charges incurred for undertaking securitization measures by the bank, the immovable property can be redeemed.

However, in view of our findings recorded earlier, we do not find any merit in this Writ Petition and it is accordingly dismissed. No costs.

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

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

07th April 2016

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