

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT PETITION No.35367 of 2015

Date:18.7.2016

Between:

R.Siva Sai Swaroop,
S/o Late Lakshman Rao

.....Petitioner

And:

State Bank of India,
Visakhapatnam, repled by its
Authorized Officer and six others.

....Respondents

Counsel for the petitioner: Party-in-person

Counsel for Respondent Nos.1 to 4: Mr. Maruti Jadav
For Mr. B.S.Prasad

The Court made the following:

ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for a *Mandamus* to declare the action of respondent Nos.1 to 4 in invoking the provisions of Section-14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') by filing a petition in CrI.M.P.No.3008 of

2015 before the Chief Metropolitan Magistrate, Visakhapatnam, as illegal and arbitrary.

Mr. R.Siva Sai Swaroop, who has appeared in person, submitted that by order passed on 30.9.2015, the Debt Recovery Tribunal-3, Kolkata, In-charge Debt Recovery Tribunal, Visakhapatnam, (for short 'the Tribunal') disposed of the Securitization Appeal by taking note of the fact that on 31.7.2015, the applicant, who is stated to be the wife of the petitioner, informed it that she is willing to settle the dues in two months' time and that, on the date of disposal of the appeal, the counsel for the applicant was not present and as per the counsel for the respondent-bank, there were dues to an extent of Rs.1,83,000/- and granted one month time for paying the entire dues.

The grievance of the petitioner, who is stated to be a joint purchaser along with his wife, is that he had no notice of hearing of the case by the Tribunal on 30.9.2015, as, the appeal was actually adjourned to 02.11.2015, and that be that as it may, respondent No.1-bank has not disclosed the fact that it has approached the jurisdictional Magistrate under Section-14 of the SARFAESI Act by filing an application on 31.7.2015 and obtained possession order on 27.8.2015. He has further submitted that a sum of Rs.1,83,000/-, referred to in the Tribunal's order, dated 30.9.2015, was paid by the petitioner and his wife on 05.11.2015 and that, therefore, the petitioner and his wife are entitled to return of the mortgaged documents.

Learned counsel representing Mr. B.S.Prasad, learned counsel for respondent Nos.1 to 4, while admitting that the petitioner and his wife have deposited Rs.1,83,000/-, however, further submitted that they are still due and payable a sum of Rs.1,094/- besides some incidental expenses, which he has not quantified. He has

further submitted that as the documents were handed over by the original mortgagor, the petitioner may not be entitled to return of the same.

The original mortgagor is arrayed as respondent No.6. In pursuance of the notice ordered by this Court, the same was sent to him and the office report shows that the notice sent to his personal address was returned with the postal endorsement that he is not available in the address. Obviously, respondent No.6, who sold the property to the petitioner and his wife under registered sale deed, dated 28.01.2008, evaded the notice.

The fact that the petitioner and his wife have purchased the property under registered sale deed from respondent No.6 is not in dispute. The further fact that he along with his wife filed the securitisation appeal and paid a sum of Rs.1,83,000/- to respondent No.1-Bank is also not in dispute.

In these facts and circumstances of the case, the petitioner is permitted to pay the remaining balance of Rs.1,094 along with the incidental expenditure, if any. As soon as such payment is received, respondent No.2 shall issue notice to the petitioner as well as respondent No.6 fixing a date, which shall not be later than three weeks from the date of receipt of the balance amount from the petitioner, for return of the mortgaged documents. On the said date, respondent No.2 shall return the mortgaged documents to the petitioner, unless respondent No.6 raises legally sustainable objections for such return. In such event, respondent No.2 shall pass a speaking order and communicate the same to the petitioner. In the event, respondent No.6 evades service of notice, respondent No.2 shall return the mortgaged documents to the petitioner.

Subject to the above directions, the Writ Petition is

disposed of.

As a sequel to disposal of the Writ Petition, WPMP.No.45429 of 2015 filed by the petitioner for interim relief is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

*18th July 2016
DR*