

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

Writ Petition No.28154 of 2016

Date:23.8.2016

Between:

Mohd. Abdul Rasheed,
S/o Late Abdul Waheed and another.

..... Petitioners

And:

State Bank of India, Secunderabad,
reptd by its Authorized Officer-
Ms. R.Lalita and four others.

....Respondents

Counsel for the petitioners: Mr. M.R.K.Chowdary
Learned Senior counsel
For Mr. P.V.Mahesh

Counsel for the respondents: None appeared

The Court made the following:

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

This Writ Petition is filed for a *Mandamus* to set aside order, dated 12.02.2016, in CrI.M.P.No.370 of 2016 on the file of the learned Chief Metropolitan Magistrate, Hyderabad.

The petitioners claim that they are brothers and owners of house property bearing No.8-3-938, Yellareddyguda, Hyderabad. They averred that earlier, O.S.Nos.943 of 1995 and 1591 of 2001, which were filed by one B.T.Sai and Seshasai, respectively, in respect of the said property against them were dismissed. They have further averred that as respondent Nos.2 and 3 were continuing to interfere with their possession of the said property, they have filed O.S.No.113 of 2016 against the said respondents and another person by name-B.T.V.Seshasai and that, in I.A.No.11 of 2016 filed for temporary injunction, the learned Magistrate granted an interim order of *status quo*, while ordering notice and that the said *status quo* order is in force.

In the present Writ Petition, the grievance of the petitioners is that respondent No.1, who claims to be the secured creditor in respect of the property bearing No.8-3-945/A/18, which was allegedly mortgaged by respondent Nos.2 and 3, approached the Chief Metropolitan Magistrate, Hyderabad by

filing Crl.M.P.No.370 of 2016 under Section-14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and that, an order, dated 12.02.2016, was passed by the said Magistrate appointing an Advocate-Commissioner for taking possession of the afore-mentioned property.

Mr. M.R.K.Chowdary, learned senior counsel appearing for the petitioners, submitted that in the guise of taking possession of the property bearing No.8-3-945/A/18, the Advocate-Commissioner is seeking to take possession of the petitioners' property bearing No.8-3-938 and in that process, the Advocate-Commissioner has not followed the directions issued by the Chief Metropolitan Magistrate, Hyderabad by not issuing notice to the occupant, if any, found other than the borrower/mortgager giving time not less than 15 days time before the execution of the warrant. He has further submitted that while passing the said order, the learned Magistrate has not followed the procedure prescribed under Section-14 of the SARFAESI Act.

Learned senior counsel has also submitted that his clients have filed an application for impleadment of respondent No.1- bank in O.S.No.113 of 2016; that after receiving the notice from

the Court, respondent No.1 has filed its counter-affidavit; and that the said proceedings are pending before the civil Court.

Mr. C.Prabhakar, learned counsel representing respondent No.1-bank, submitted that the petitioners have earlier filed O.S.No.838 of 2013, which was dismissed and that, they have again filed O.S.No.113 of 2016 and obtained an order of *status quo* against respondent Nos.2 and 3 and another. He has further submitted that in an application filed for impleadment of respondent No.1-bank in the said suit, the bank has filed a counter-affidavit. He has also argued that on the petitioners' own showing, they are interested in premises bearing No.8-3-938, whereas the secured property pertains to premises bearing No.8-3-945/A/18 and that, therefore, the petitioners have no *locus standi* to question the order passed by the Magistrate under Section-14 of the SARFAESI Act.

We have carefully considered the respective submissions of the learned counsel for the parties.

From the admitted pleadings of the parties, it is evident that there is a serious dispute regarding the identity of the property between the petitioners on one side and respondent Nos.2 and 3 on the other. The petitioners have filed O.S.No.113 of 2016, secured an order of *status quo* in an injunction application filed therein against respondent Nos.2 and 3 and

another and the said suit is pending. It is also an admitted position that the petitioners have filed an application for impleadment of respondent No.1 in the said suit and that the said application is also pending.

As regards the order passed by the learned Chief Metropolitan Magistrate, Hyderabad, a perusal of the same would show that the same was passed in respect of the premises bearing MCH No.8-3-945/A/18 on Plot No.5, admeasuring 600 square yards, at Nagarjuna Nagar Colony, Yellareddyguda, Hyderabad. It is not the pleaded case of the petitioners that they are the owners of the said property.

On the contrary, it is the specific plea of the petitioners that they are the owners of house property admeasuring 1,000 square yards bearing No.8-3-938, Yellareddyguda, Hyderabad, and that, in the guise of taking possession of the premises bearing MCH No.8-3-945/A/18, respondent No.1 is seeking to take possession of house bearing No.8-3-938.

In our opinion, when the property claimed by the petitioners is not the subject matter of order, dated 12.02.2016, in CrI.M.P.No.370 of 2016 passed by the Chief Metropolitan Magistrate, Hyderabad, the petitioners have no locus to question the same on any ground. Even assuming that neither the Chief Metropolitan Magistrate, Hyderabad, nor the Advocate-

Commissioner appointed by him have followed proper procedure, the petitioners have no right to raise these aspects by invoking the jurisdiction of this Court under Article-226 of the Constitution of India for the simple reason that the property claimed by the petitioners is not covered by the said order. All that the petitioners pleaded in the present Writ Petition is that in the guise of taking possession of the house property bearing MCH.No.8-3-945/A/18, covered by order, dated 12.02.2016, the Advocate-Commissioner is seeking to take possession of their property bearing No.8-3-938. This dispute, in our opinion, needs to be adjudicated in the pending civil suit. The petitioners have rightly filed an application for impleadment of respondent No.1 in the said suit. If they have any apprehension of dispossession of their property, they are entitled to seek interim protection of their physical possession of the house property bearing No.8-3-938.

In this view of the matter, it is unnecessary for this Court to adjudicate upon the legality or otherwise of the order, dated 12.02.2016, in CrI.M.P.No.370 of 2016 passed by the learned Chief Metropolitan Magistrate, Hyderabad.

For the afore-mentioned reasons, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition,
WPMP.No.34877 of 2016 filed by the petitioners for interim
relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

23rd August 2016

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