**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

**WRIT PETITION No.8186 of 2016**

**26.07.2016**

Between:

Smt.G.Suvarna Balram

..Petitioner

And

Bank of India, Hyderabad

..Respondent

Counsel for the petitioner: Mr.B.Nalin Kumar

Counsel for the respondent: Mrs.V.Dyumani

The Court made the following:

**ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

Feeling aggrieved by the measures initiated by the respondent bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), the petitioner, who is an alleged guarantor for a loan, filed this writ petition.

2. We have heard Mr.B.Nalin Kumar, learned counsel for the petitioner, and Mrs.V.Dyumani, learned counsel for the respondent, and perused the record.

3. From the petitioner's own averments, it is evident that when a notice under Section 13(2) of the SARFAESI Act was issued on 15.09.2009, the petitioner failed to give any reply. It is only after receipt of a further notice, dated 12.12.2012, from the respondent, that a reply/legal notice was issued by the petitioner on 15.02.2013 disputing the claim of the respondent that she stood as a guarantor. She has taken the stand that she approached the respondent for a loan for renovation of a dilapidated house and that on being promised that a loan will be sanctioned in her favour, she was made to deposit title deeds, *vide* registered memorandum of deposit of title deeds, dated 03.07.2006. The petitioner, accordingly, stated that the title deeds, which were handed over by her in connection with a loan transaction, were being misused by the respondent by projecting as if she has created a mortgage in connection with a loan sanctioned to a third party. This legal notice was immediately replied to by the respondent through its counsel, wherein it was, *inter alia,* stated as under:

> "…….The contentions of your advocate do not hold any water and the documents speak for themselves and there is no meaning in exchanging the correspondence. However, for the sake of your clarity we advise you that you have stood as the guarantor and executed the guarantee documents and

> also created the mortgage as a security for the said accounts of Mrs.Tumluri Sridevi & Mr.Hanumashiva. As such, you are liable for the repayment of amount availed by the borrowers."

The petitioner obtained certain documents under the Right to Information Act, 2005, from the respondent on 29.06.2013. Surprisingly, after receipt of those documents, the petitioner has not corresponded with the respondent any further. On 26.02.2016, the respondent issued the constructive possession notice under Section 13(4) of the SARFAESI Act. It is this notice, which is impugned in this writ petition.

4. Mr.B.Nalin Kumar, learned counsel for the petitioner, has submitted that though his client has a remedy of appeal under Section 17 of the SARFAESI Act, as the very documents themselves show that no mortgage has been created in connection with a loan sanctioned to a third party, the respondent has no jurisdiction to initiate measures under Section 13(4) of the Act for recovery of the purported loan amount.

5. Mrs.V.Dyumani, learned counsel for the respondent, on the contrary, has submitted that the very documents, which were supplied by the respondent clearly demonstrate that a valid mortgage is created by the petitioner in connection with the loan sanctioned to two persons *viz*., Mrs.Tumuluri Sridevi and Tumuluri Hanumashiva, for which the petitioner has stood as guarantor.

6. Under Section 17 of the SARFAESI Act, any person, including the borrower, aggrieved by any of the measures referred to in Sub-Section (4) of Section 13 of the SARFAESI Act, taken by the secured creditor or his authorised officer, is entitled to approach the Debts Recovery Tribunal by way of an application questioning such measures. Therefore, the issue raised by the petitioner in this writ petition *viz*., that she has not stood as guarantor in connection with the

loan sanctioned to the aforementioned two persons could be raised by the petitioner before the Debts Recovery Tribunal. This Court, exercising its jurisdiction under Article 226 of the Constitution of India, does not assume the role of the fact finding forum by sifting through the documents, in order to know whether the petitioner has stood as guarantor or not. When the statute has created a *forum* for deciding all such issues, it lies ill in the mouth of the petitioner to approach this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

7. In **United Bank of India vs. Satyawati Tondon and others**[1], the Supreme Court has shown a serious concern at the High Courts continuing to ignore the availability of statutory remedies under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the SARFAESI Act and exercing the jurisdiction under Article 226 of the Constitution of India for passing the orders, which have serious adverse impact on the right of banks and other financial institutions to recover their dues.

8. Similar views were expressed by the Supreme Court in an earlier judgment in **Union Bank of India vs. Panchanan Subudhi**[2].

9. The facts narrated above would show that three years after the first notice was issued under Section 13(2) of the SARFAESI Act, the petitioner has responded and that too after issuance of a further notice. When she has taken the stand that she has not created mortgage in connection with the loan sanctioned to third parties, the respondent has stoutly denied the said stand and has even supplied all the documents sought for by her. The petitioner again kept silent having received those documents.

10. In the light of the above discussed facts and the settled legal position, we are not inclined to entertain this writ petition for

adjudication on merits, as the petitioner has an effective remedy of appeal under Section 17 of the SARFAESI Act and the Writ Petition is, accordingly, dismissed.

11. As a sequel to dismissal of the writ petition, W.P.M.P.Nos.10380 and 29712 of 2016 filed by the petitioner for interim reliefs shall stand dismissed.

**C.V.NAGARJUNA REDDY, J**

**G.SHYAM PRASAD, J**

**26th July, 2016**
GHN

---

[1] (2010) 8 SCC 110
[2] (2010) 15 SCC 552