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

<u>WRIT PETITION No.3525 of 2016</u>

<u>ORDER:</u> **(per the Hon'ble Sri Justice Nooty Ramamohana Rao)**

Heard Sri K.L.N.Swamy, learned counsel for the writ petitioner, and it appears, on behalf of respondents 1 and 2, one Sri Noorulla Baig has taken notice but it is now represented that he does not come and practice in this Court. On his behalf, some one deputizing him would only seek time without making any submissions on merits, in spite of service of notice by the counsel for the petitioner.

In these given set of circumstances, we are helpless and we are proceeding further in the matter. It appears, between the third respondent and the writ petitioner, there are certain disputes concerning an immovable property which is described as bearing H.No.3-9-52 lying in Survey Nos.10, 11, 15 and 71/part, Syed Jalal Gardens, Shiva Arun Colony, West Maredpally, Secunderabad. It appears, the first respondent bank has taken possession of the secured asset on 02.01.2016 in terms of and in accordance with 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) as in spite of serving the notice under sub-section (2) of Section 13 of the Act on 03.10.2015, the borrower has not made any attempt to liquidate the liability.

We have been saved from the bother of examining the correctness or otherwise of the action of the first respondent bank initiated under sub-section (4) of Section 13 of the Act as the learned counsel for the petitioner has come forward with a plea that the petitioner would deposit the entire liability or the amount accepted by the first respondent bank under any possible settlement scheme so that he could be put back in possession of the said secured asset. Though an attempt is made that the bank should also be directed to deliver/return the title deed available with it under deposit, we are not in agreement with regard to this contention as to whom the title deed should be returned upon the loan being liquidated can be the subject matter of consideration of contract between the parties or some other arrangement, which the parties may consider it as convenient to them. Hence, we do not wish to enter into the said area and leave it open to the parties to work out their respective rights/liabilities accordingly.

So far as the option of the petitioner to liquidate the liability, as noted above by us, the first respondent bank shall not hesitate to receive any such deposit of money being made by the petitioner or on her behalf. Upon such liquidation of the liability, it would only be fair that the first respondent bank will not proceed any further insofar as the secured asset is concerned under sub-section (4) of Section 13 of the SARFAESI Act provided the said secured asset is not the subject matter of any other loan transaction with the respondent bank. It shall necessarily follow that upon liquidation of the liability, the possession of secured asset shall be restored to the person from whom such possession has been taken over.

With this, the Writ Petition stands disposed of.

Consequently, miscellaneous petitions, if any pending, also stand disposed of. No order as to costs.

NOOTY RAMAMOHANA RAO, J

23rd FEBRUARY, 2016.

B.SIVA SANKARA RAO, J

Note: issue c.c. in three days.

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