

**HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

Writ Petition No.13603 of 2016

ORDER: (*per Hon'ble Dr. Justice B.Siva Sankara Rao*)

The writ petitioner is the borrower under Section 2(f) of the SARFAESI Act, 2002 (for short 'the Act') from having availed financial assistance from the respondent bank, defined under Section 2(c) of the Act, for the default committed the loan account is classified as non-performing asset as per section 2(o) of the Act and the bank initiated securitization measures.

The grievance of the petitioner mainly in the writ petition is that though notice under Section 13(2) of the Act was issued on 17.08.2013 there is a reply under Section 13 (3) of the Act given by him on 9.10.2013. However, there was no specific communication of rejection by the bank as contemplated under Section 13 (3) (a) of the Act, the bank under the guise of the same issued possession notice under Section 13 (4) of the Act, with sale notice & publication of sale by public auction as contemplated by Rule 8 (6) read with Rule 9 (1) of the SI (E) Rules, 2002. It is the further submission that he maintained S.A.No.132 of 2015 and also filed an application for stay of the proceedings in I.A.No.810 of 2015, where the bank filed counter and reply to it has also been filed by him, however, since April, 2015, the Tribunal did not pass any orders thereon even he reported ready and the proceedings of the proposed sale by the bank have to be stayed. He placed reliance to that on the expression of the Gujarat High Court in *Gujarat State Fertilizer Co. Ltd v. Union of India*^[1].

A perusal of the expression in the present facts is of no assistance in seeking indulgence of this Court under Article 226 of the Constitution of India.

However, the fact remains that the petitioner is an industry carrying on its business under the Companies Act with several workers and it is his submission, subject to result of SA No.132 of 2015 before the DRT to decide against the non compliance of the statutory provisions, they are willing to pay some amount in the mean time, subject to stay of physical possession as per the order dated 3.2.2016 under Section 14 of the Act passed in Crl.M.P.65 of 2016 by the learned Chief Metropolitan Magistrate-cum-I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

Heard learned counsel appearing for the petitioner and also the learned Standing Counsel for the respondent-Bank. Perused the material on record.

Having regard to the factual matrix supra, while holding no grounds to admit the writ petition and keep it pending by any indefinite stay, the writ petition is disposed of to sebserve the ends of justice by passing the equitable order as follows:

The Bank pursuant to the order of the Chief Metropolitan Magistrate-cum-I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar under Section 14 of the Act can take constructive possession and permit the petitioner to continue in physical possession for a period of two months under the control and possession of the Bank. In the mean time, it is left open to the petitioner to work out his remedies available if any before the DRT in S.A.No.132 of 2015 and in the interim application No.810 of 2015. The interim arrangement to continue for two months supra is subject to condition of the petitioner paying to the bank a minimum of Rs.10 crores on or before 31st May, 2016. In the case of failure to pay the amount supra, the Bank is at liberty to proceed further by dislodging the petitioner, take physical possession and take further steps for sale without any further reference to the Court. No costs.

Miscellaneous applications, if any, pending shall stand closed.

R.KANTHA RAO, J

DR. B. SIVA SANKARA RAO, J

21st April, 2016
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[\[1\]](#) 2013(198) ECR 0456(Gujarat)