

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

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WRIT PETITION No.10998 of 2016
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ORDER: (per Hon'ble Sri Justice Nooty Ramamohan Rao)

The petitioner herein, a borrower with the respondent-Bank, seeks a Writ of Mandamus for declaring the possession notice dated 21.07.2015, followed by the auction sale notice dated 12.01.2016, as bad in law, as they have not followed the procedure prescribed.

2. So far as auction sale notice dated 12.01.2016 is concerned, it was published proposing to conduct sale on 12.02.2016, thus clearly maintaining a thirty days time gap, as is required under Rule 8(6) read with Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"). So far as possession notice dated 21.07.2015 is concerned, we gather therefrom that a demand notice under sub-section (2) of Section 13 of the SARFAESI Act was issued on 23.03.2013, requiring the petitioner to liquidate the outstanding liability of Rs.23,17,852.54 ps. Since the petitioner has not responded to the said demand notice and did not liquidate the liability, the follow up action under sub-section (4) of Section 13 of the SARFAESI Act has been initiated and that is how the possession notice dated 21.07.2015 has been published.

3. We are not in a position to find any legal infirmity in the action of the respondent-Bank in publishing the said possession notice, either, particularly when the petitioner is not in a position to demonstrate that he has made any attempt to liquidate the liability or to secure the loan account regularized by making appropriate payment to the respondent-Bank, we cannot find fault, in principle, with the possession notice

dated 21.07.2015.

4. However, it was brought to our notice by Sri K. Purushotham, learned counsel for the petitioner, that the respondent-Bank could not conduct auction, as proposed, on 12.02.2016. He would submit that the petitioner is apprehensive that this time around, without following the due process of law, the respondent-Bank is likely to proceed and liquidate the secured asset.

5. All we need to observe is this, the respondent-Bank will carefully and scrupulously follow the principles enshrined under Section 13 of the SARFAESI Act and the Rules made thereunder and thereafter only liquidate the secured asset, but not otherwise.

6. Subject to the above observations, the writ petition stands disposed of. No order as to costs.

7. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

Dr. JUSTICE B.SIVA SANKARA RAO

06.04.2016

Msr

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