

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

WRIT PETITION No.1243 of 2016

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ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioners in this case is as under:

“The Hon'ble Court may be pleased to issue an order or orders or direction or a writ one in the nature of Writ of Mandamus to declare the action of the Respondents in initiating the procedure U/s 14(3) of the SARFAESI Act by bypassing the mandatory procedure contemplated U/s 13(4) of the Act and seizing the premises of 2nd Petitioner College without following due procedure contemplated under SARFAESI Act, 2002 as being illegal, arbitrary, unconstitutional and in violation of the provisions and procedure as mandated under SARFAESI Act, 2002 and consequently direct the respondents to remove the seals so as to enable the Petitioners to function its college activities smoothly and also set aside the Order if any passed by the 3rd respondent for taking over the physical possession of the Petitioner College and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

By order dated 18.01.2016, this Court directed return of the secured asset but the petitioners were required to pay a sum of Rs.1.00 crore within four weeks from that day. It is an admitted fact that the petitioners paid only Rs.50,00,000/- lakh and that too in two separate instalments well beyond the time stipulated by this Court. It appears that the petitioners are effectively stalling the proceedings by citing the inconvenience that would be caused to the students studying in the college situated in the land comprising the secured asset. Significant to note, no substantial ground of attack has been raised against the proceedings initiated till date under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act of 2002').

As the petitioners failed to prove their *bona fides* and the conditional interim order dated 18.01.2016 has not been complied with even as on date, we see no reason as to why the petitioners should be

provided any protection. Admittedly, the proceedings were stalled at the stage when the respondent bank had taken recourse to Section 14 of the Act of 2002 and procured the possession of the secured asset. As the respondent bank only returned the actual physical possession of the secured asset to the petitioners by virtue of the interim order dated 18.01.2016, it is deemed that the petitioners are in constructive possession of the secured asset by virtue of the order passed in their favour under Section 14 of the Act of 2002. That being so, the respondent bank would be at liberty to proceed with the matter in accordance with law given the non-compliance by the petitioners with the conditional interim order dated 18.01.2016.

The writ petition is accordingly dismissed. The petitioners shall return the actual possession of the secured asset as and when required by the respondent bank without any protest or hindrance.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

Dr. B. SIVA SANKARA RAO, J

Date:13.07.2016

GJ