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

WRIT PETITION No.4562 OF 2016

ORDER: (Per NRR,J)

The petitioner herein sought for a writ of Mandamus to declare the order passed in Crl.M.P.No.21 of 2015 by the learned Chief Metropolitan Magistrate, Cyberabad, at L.B.Nagar, Ranga Reddy district as illegal and contrary to Section 14 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

2. The 1st petitioner Company, which is incorporated under the provisions of Indian Companies Act, 1956, seems to have availed certain financial assistance with the 1st respondent bank. However, the loan account remained irregular and unpaid. Consequently, it was declared as a non-performing asset. It appears the 2nd respondent has created a mortgage as security for the financial assistance availed by the 1st petitioner. He also deposited title deeds on 08.08.2011 as guarantee/security for due discharge of the loan obtained by the 1st petitioner. Since the loan remained unliquidated and is declared as a non-performing asset, the measures contemplated under Sub Section 4 of the Section 13 of the SARFAESI Act, have now been initiated. It is in that context, the present writ petition is filed.

3. With a view to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith, the Parliament has enacted the Act. Various expressions found mentioned in the enactment are defined under Section 2(1) of the Act. The expression 'Bank' has been defined under Section 2(1)(c) of the Act in the following terms:

"Bank" means--
(i) a banking company; or

(ii) a corresponding new bank; or
(iii) the State Bank of India; or
(iv) a subsidiary bank; or
(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"

4. The 1st respondent bank, being State Bank of India falls squarely therein. Similarly the expression 'Borrower' has been assigned a very exhaustive definition under Section 2(1)(f) of the Act which runs as under:

> *"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;"*

5. From a careful analysis of the 'Borrower' as defined, even a person who has held out any guarantee or created any mortgage or pledge as a security for the financial assistance granted by any bank to another person becomes a borrower. There is no dispute on the factual count that the 2nd respondent herein has tendered guarantee to the 1st respondent-bank for the financial assistance availed by the 1st petitioner with them. Hence, the 2nd respondent herein is liable to be treated as 'borrower' for the purpose of the Act. The expression 'Financial Asset' has been defined in Section 2(1)(l) as under:

> *"Financial Asset" means debt or receivables and includes--*
> *(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or*
> *(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or*

(iii) a mortgage, charge, hypothecation or pledge of movable property; or
(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
(vi) any financial assistance;

6. Consequently all the petitioners answer the description of the borrower and the mortgage created by the 2nd respondent herein answers the expression 'Financial asset'.

7. Section 13 of the SARFAESI Act' has provided for various measures to be taken for enforcement the security interest. Under Sub Section 2 thereof, the respondent-bank has issued a demand notice requiring the petitioners herein to liquidate the entire outstanding liability within a period of 60 days. Under Sub Section 4 of Section 13 of the SARFAESI Act', if a demand notice raised in Sub Section 2 of Section 13 of the SARFAESI Act, has not been complied with, all the measures provided thereunder can be taken. In Clause (a) of Sub Section 4 of Section 13 of the SARFAESI Act, one can take possession of the secured asset of the borrower including the right to transfer by way of lease or sale of the secured asset. Since possession of the secured asset has to be taken over, the mechanism has got to be provided therefor. Hence, under Sub Section 1 of Section 14 of the SARFAESI Act, provision is made for any secured creditor who approaches the learned Chief Metropolitan Magistrate in writing or the District Magistrate within whose jurisdiction such secured asset is situated, has been empowered to provide necessary assistance. In the instant case, the learned Chief Metropolitan Magistrate, L.B.Nagar, at Cyberabad was found to possess the necessary power inasmuch as the secured asset is lying within the

jurisdictional area of the said learned Chief Metropolitan Magistrate.

8. In the above given circumstances and legal regime prevailing, we do not find any infirmity either legal or otherwise in the 1st respondent bank approaching the learned Chief Metropolitan Magistrate in writing and thus proposing to take possession of the asset and then make it over to the 1st respondent bank but however, the learned counsel for the 1st petitioner would urge that if the petitioner is granted time upto 28.03.2016, the 1st petitioner would liquidate the entire liability. Hence, while preserving the right of the 1st respondent bank to take all necessary follow up action pursuant to the petition filed by him before the learned Chief Metropolitan Magistrate, Cyberabad, Ranga Reddy district, for taking over the possession of the secured asset in question, we grant the 1st petitioner time upto 28.03.2016 for liquidating the entire liability and if they do so, the 1st respondent bank shall not confirm the sale in favour of the highest bidder or give sale certificate in favour of any such highest bidder pouched for the sale of the secured asset. For any reason the 1st petitioner has not deposited the entire money and incidental expenses incurred by debt, it shall open to the 1st respondent bank to proceed further and transfer the asset in favour of the highest bidder without any further reference to this Court.

9. In the result, the Writ Petition is disposed of on hearing Sri B.Mohan, learned counsel for the petitioners, who has accepted notice to the 1st respondent bank.

10. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr.B.SIVA SANKARA RAO, J

Date: 23.02.2016.
VVR