HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24782 OF 2012

ORDER:

The case of the petitioner is that he is the owner and possessor of the house bearing municipal No.6-103/A, admeasuring Ac.0.09 guntas in Survey No.138/3AA, situated at Durki Village, Birkur Mandal, Nizamabad District. The petitioner also acquired a rice Mill under the name and style of "M/s.Ali Rice Mill", which is situated nearer to the above property bearing municipal No.6-103, admeasuring 5089.22 sq.yards. The petitioner mortgaged the land and rice mill under premises bearing municipal No.6-103, admeasuring 5089.22 square yards with the 3rd respondent and continuously paying the loan amount. Thereafter, due to financial crises in the business the petitioner failed to pay the loan amount to the 3rd respondent, as such the 3rd respondent initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and proceeding with the said notice as per law. The case of the petitioner is that he has no objection for proceeding against the rice mill, but the respondents 1 and 2 are trying to interfere with the other property. Aggrieved by the action of the respondents in trying to interfere with the other property bearing municipal No.6-103A/A, admeasuring Ac.0.09 guntas in Survey No.138/3AA, situated at Durki Village, Birkur Mandal, Nizamabad District, present writ petition is filed.

The 3rd respondent filed counter affidavit stating that at request of the petitioner this respondent bank sanctioned credit facility to the tune of Rs.59,50,000/- to the petitioner and the petitioner executed the loan documents and mortgaged the factory land and buildings with G.P.No.6-103 in an extent of 5089.22 Sq.yards in Survey No.136/2E, situated at Durki Village, Birkur Mandal, Nizamabad District standing in the name of the petitioner; that the petitioner has also mortgaged the agricultural land in an extent of Ac.8.31 guntas in survey No.25/1 and 27/2 towards the security for repayment of the aforesaid loans, but, however, he failed to repay the amounts due to the bank as agreed upon and as such, the respondent bank initiated proceedings under SARFEASI Act and issued demand notice dated 02.12.2010 calling upon the petitioner to repay the entire due amount of Rs.51,09,300.47 ps. as on 30.11.2010 with interest there on within sixty days from the date of receipt of the said notice and that as the petitioner failed to repay the said amount as demanded this respondent Bank issued the possession notice dated 07.02.2011 under Rule 8(1) of the Security Interest

(Enforcement) Rules, 2002 for taking possession of the factory land and buildings in G.P.No.6-103 in Survey No.136/2E of Durki Village under Section 13(4) of the SARFEASI Act and approached the 1st respondent under Section 14 of the SARFEASI Act to assist the Bank to take the physical possession of the aforesaid property. Accordingly, the 1st respondent directed the 2nd respondent to take physical possession of the aforesaid property and hand over to the concerned Bank vide his orders dated 03.07.2012. It is also stated that the respondent Bank has initiated proceedings by following the provisions of the SARFEASI Act, 2002 and the Rules made there under and proceedings under the SARFEASI Act against the Security Interest created in favour of the Bank, but not against the property which is not mortgaged as alleged by the petitioner. It is further stated that after creation of mortgage, the petitioner has constructed the house in the said property and that since it is an accession to the property under mortgage, this respondent Bank being the mortgagee is entitled to proceed against the same. As such, the Bank is entitled to take physical possession of the Security Interest for the purpose of sale under Section 13(4) of SARFAESI Act and if the petitioner is aggrieved by any of the measures taken by this Respondent Bank under the SARFAESI Act, he may approach the Debts

Recovery Tribunal under Section 17 of the SARFAESI Act. It is further stated that the petitioner by suppressing all the material facts has obtained the interim orders with an intention to delay and avoid the repayment of due amount and finally pleaded to dismiss the writ petition.

Learned counsel for the petitioner submits that the petitioner has no objection for initiating proceedings against the mortgaged property i.e. Rice Mill and lands, but, not against the property which is not mortgaged with the Bank. The details of the properties held by the petitioner mortgaged and non-mortgaged are as follows;

Sl.No.& Name of Owner	The property **mortgaged** with the Bank.	The property which was **not mortgaged** with the Bank.
Shaik Ali Hussain	All that the mill land and buildings in Survey no.136/2E, GP.No.6-103, total plot area 5089.22 Square yards situated at Durki Village, Birkur Mandal, Nizamabad District.	All that the house bearing municipal No.6-103/A in Survey No.138/3AA, total admeasuring Ac.0.09 guntas, situated at Durki Village, Birkur Mandal, Nizamabad District.

Learned Standing Counsel for the 3rd respondent states that the Bank is proceeding only against mortgaged property.

The counter affidavit of the 3rd respondent clearly shows the details of the mortgaged property which is similar to that of the details given by the petitioner at para-3 of the writ affidavit. Even the schedule of property given in proceedings dated 03.07.2012 issued by the 1st respondent is similar to that of the details given by the petitioner in writ affidavit. In view of the same, it is open for the 3rd respondent Bank to proceed further against the mortgaged property in terms of the proceedings dated 03.07.2012. If the sale proceeds of the said mortgaged property is not sufficient, it is open for the 3rd respondent Bank to take action against the other properties of the petitioner.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

19.10.2016
t k.