

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

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WRIT PETITION Nos.23271 & 32199 of 2015

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Date:19.07.2016

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W.P.No.23271 of 2015

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Between:

Union Bank of India,
A.R.B. Branch,
Saifabad, Hyderabad
Rep. by its Senior Manager,
D.B.A. Narayana,
S/o. Late Mallapu Raju.

.. Petitioner

and

The State of Telangana,
Rep. by its Principal Secretary,
Stamps & Registration Department,
Telangana Secretariat,
Secretariat Buildings,
Hyderabad
and others.

..
Respondents

Counsel for the Petitioner: Mr. P.Venugopal, Senior Counsel
for

Mr. M.Hamsa Raj

Counsel for Respondent Nos.1 to 3 : G.P. for Revenue

Counsel for Respondent Nos.4 & 5: Mr. Y.Ravendra Kumar.

THE COURT MADE THE FOLLOWING:

COMMON ORDER: (*Per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

W.P.No.23271 of 2015 is filed by the Union Bank of India, A.R.B. Branch, Saifabad, Hyderabad, for a Mandamus to declare the action of the official respondents in refusing to receive the sale deed executed by the petitioner in respect of property covered under portion-B in Plot No.27/B-part, admeasuring 2035 sq. yards, with plinth area of 802 sq. feet (RCC) and 850 sq. feet (ACC) in Sy.Nos.294/Part and 300 together with building and shed covered under Block No.4 situated at Venkateswara Co-operative Industrial Estate, Jeedimetla Village, Quthbullapur Mandal, Ranga Reddy District, in favour of one M. Malla Reddy, as illegal and arbitrary.

W.P.No.32199 of 2015 is filed by one M/s. Mounika Chemicals represented by its Proprietor, who is petitioner No.2, and his wife, petitioner No.3, for issue of a Writ of Certiorari to call for records and quash proceedings under Section 13 (4) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), such as the alleged taking possession, conducting e-auction on 19.05.2015 with regard to the secured asset including all subsequent proceedings pertaining to schedule property, as being contrary to the provisions of the SARFAESI Act

and the judgment of the Supreme Court in **Mathew Varghese v. M. Amritha Kumar and others**^[1].

After a lengthy hearing of the case, adjudication of these writ petitions on merits is obviated for the reason that after W.P.No.23271 of 2015 is filed by the Union Bank of India, who is the secured creditor, the borrowers filed W.P.No.32199 of 2015 without availing the remedy available to them under Section 17 of the SARFAESI Act. They were also able to persuade this Court to pass an interim order on 01.12.2015 directing the Bank not to register the Sale Certificate in favour of the auction purchaser, who is shown as respondent No.3.

Though Mr. Addepalli Suryanarayana, learned Senior Counsel appearing for the petitioners in W.P.No.32199 of 2015, has made strong efforts to persuade us to accept his plea that the acts of the Bank, such as alleged failure to follow the procedure under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, do not fall within the purview of the jurisdiction of the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, on hearing the views expressed by this Court during the hearing, he has agreed for filing an appeal before the Debt Recovery Tribunal. He has, however, requested that in view of the subsistence of interim order in W.P.No.32199 of 2015, his clients' interests may be protected by continuing the interim order for a reasonable length of time, to enable them to secure appropriate interim orders from the Debt Recovery Tribunal. He has also further submitted that his clients may be permitted to file an application for

condonation of delay in filing the appeal under Section 17 of the SARFAESI Act, by raising all legally permissible grounds.

Mr. M.V.Rajaram, learned counsel representing Mr. B.A.Prakash Reddy, learned counsel for Respondent No.3 in W.P.No.32199 of 2015, submitted that since his client is already in possession of the property and running an industry, his interest may be protected while disposing of the writ petitions.

Having regard to the facts referred to above and the submissions of the learned counsel for all the parties, we feel it appropriate to dispose of W.P.No.32199 of 2015 by granting liberty to the petitioners to avail the remedy of appeal under Section 17 of the SARFAESI Act. They are also permitted to file an application for condonation of delay in filing the appeal and also appropriate application for interim relief and, in such an event, the Tribunal shall consider the entire facts and take appropriate decision thereof. As it is submitted by the learned counsel for all the parties that regular Presiding Officer has not been functioning in the Debt Recovery Tribunal of Hyderabad and an incharge Officer is visiting Hyderabad, but not in regular intervals, to facilitate the petitioners to claim interim relief, we feel it appropriate to continue the interim order granted by this Court on 01.12.2015 in W.P.No.32199 of 2015, for a period of two months. If the petitioners file the appeal within four weeks, the Tribunal shall pass appropriate orders on the condone delay petition as well as the application for interim relief, if any filed by the petitioners, after notice to all the respondents in the proposed appeal, within one

month thereafter.

Subject to the above directions, W.P.No.32199 of 2015 is disposed of.

As regards W.P.No.23271 of 2015, in the light of the order passed in W.P.No.32199 of 2015, no further adjudication of this writ petition is necessary and, accordingly, the same is dismissed.

As a sequel, WPMP.Nos.41606, 41608, 41609, 44861 of 2015, 27471 & WPMP.No.28985 of 2016 in W.P.No.32199 of 2015 and WPMP.Nos.30158 & 38870 of 2015 in W.P.No.23271 of 2015 are disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

A.V.SESHA SAI, J

19.07.2016

v v

[\[1\]](#) (2014) 5 SCC 610