

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.25586 of 2016

02.08.2016

Between:

Smt. Tejawath Vijaya

..Petitioner

And

The State Bank of Hyderabad, Warangal, and another

..Respondents

Counsel for the petitioner: Mr.Bhanu Murthy Bala

Counsel for the respondents: --

The Court made the following:

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

The petitioner borrowed certain monies from the respondents in the year 2009 and failed to repay the same as per the loan conditions, leading to the issuance of demand notice, dated 02.11.2015, and possession notice, dated 13.11.2015. On 23.02.2016, the respondents offered one time settlement (OTS) under OTS scheme, as per which, the petitioner was required to pay a sum of Rs.4,79,009/- by 29.02.2016. The petitioner made a representation on 21.03.2016, wherein a request was made that the respondents may accept payment of Rs.2,00,000/- as full and final settlement of their claim. Evidently, this offer was not accepted by the respondents and another possession notice, dated 20.04.2016, was issued. As the petitioner failed to respond, the impugned sale notice was issued on 29.06.2016, giving her 30 days time for payment. Questioning this notice, the petitioner filed this writ petition.

2. The learned counsel for the petitioner has submitted that his client has no intention of evading repayment of the loan amount and that since she is in acute financial problems, due to the circumstances which have taken place beyond the control of her family, she was unable to adhere to the payment schedule.

3. It is trite position of the law that the secured creditor has unfettered right to recover the loan amounts under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). Unless the action initiated by the financial institution under the SARFAESI Act suffers from serious procedural irregularities or violation of the provisions of the SARFAESI Act, the Tribunals and the Courts would not interfere with such right. No such illegalities have been pointed out by the petitioner in any of the measures taken by the respondents. As noted above, the only plea that has been advanced

by the petitioner is that of her financial problems. This Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, would not entertain such pleas and interdict the right of the secured creditor from enforcing security interests. However, since a final auction notice has not been issued by the respondents, the petitioner is permitted to approach the former with a representation. If such representation is not favourably considered, the petitioner may avail the remedy under Section 17 of the SARFAESI Act.

4. Subject to the liberty given to the petitioner as above, the Writ Petition is dismissed.

5. As a sequel to dismissal of the writ petition, W.P.M.P.No.31604 of 2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

A.V.SESHA SAI, J

02nd August, 2016
GHN