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

WRIT PETITION NO.1096 OF 2016

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is instituted challenging the correctness and legality of the possession notice drawn and delivered to the petitioner on 02.12.2015 by the Authorized Officer of the State Bank of India, Markapur Branch, Prakasam district, the respondent herein. Fortunately, the facts are not in dispute. One Sri Maddela Hari Prasad, proprietor of M/s Rama Sai Agencies has availed certain financial assistance from the State Bank of India, Markapur Branch and as a security, he created a mortgage by way of deposit of title deeds over a certain immovable property. However, the loan amount has not been repaid as per the terms and conditions stipulated in the agreement. Consequently, the default committed has resulted in declaring the said loan account as a non-performing asset. Hence, the respondent bank has taken measures for securitization of the loan under Section 13 of the SARFAESI Act by drawing a demand notice on 31.07.2015 under Subsection (2) of Section 13 of the Act, raising a demand in a sum of Rs.31,24,260/-. Since, the said demand notice has not produced the desired result, the respondent bank has taken symbolic possession of the secured asset under Subsection 4 of Section 13 of the Act read with Rule 8 of The Security Interest (Enforcement) Rules, 2002 on 08.09.2015. The respondent bank has issued possession notice on 16.10.2015. In response thereto, the petitioner has deposited a sum of Rs.10,00,000/- on 31.10.2015. Still, there was substantial amount which is due and payable and hence, possession notice was again delivered on 02.12.2015. That is how the present writ petition came to be instituted.

In view of the fact that the State Bank of India answers the description of 'Bank', as defined in Section 2(1)(c) and the petitioner herein answers the description 'borrower' as defined in Section 2(1)(f) and 'security interest' in Section 2(1)(zf) and the default committed by him rendered the loan account as a non-performing asset and consequently entitled the respondent bank to take measures of securitization under Section 13 of the said Act, which is ushered in, for purpose of protecting the interests of the secured creditors and other financial institutions, we cannot find fault with the action initiated by the respondent bank, as it is in accord and conformity with the provisions contained in Section 13 of the SARFAESI Act, but however, Sri Adarsh Reddy, learned counsel for the petitioner would urge that the petitioner could not deposit the money as directed by this Court by its interlocutory order dated 18.01.2016, it could only pay a sum of Rs.1,90,000/- on two different occasions on 06.02.2016 and 20.02.2016. Still, there was substantial amounts outstanding and due. In the above backdrop, the learned counsel for the petitioner would urge that the petitioner may be granted time till 29.03.2016 to deposit a further sum of Rs.4,00,000/- and the balance outstanding liability will be liquidated by the petitioner on or before 31.05.2016. Accordingly, we dispose of this writ petition making it clear to the petitioner that he shall deposit a sum of not less than Rs.4,00,000/- on or before 29.03.2016 and the balance amount in one or more than one installment, but however, the entire outstanding liability together with the incidental expenses incurred by the respondent bank for undertaking securitization measures shall be cleared latest by 31.05.2016. Any failure on the part of the petitioner to live up to the promise which was made today at the Bar, which is accepted by us, will render the respondent bank free to proceed further in accordance with law against the secured asset and the petitioner borrower without any further reference to this Court.

The writ petition accordingly stands disposed of.

Consequently, miscellaneous applications pending, if any, shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

DR. JUSTICE B. SIVA SANKARA RAO

Date:09.03.2016

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