

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No.8637 of 2017

ORDER: (per SK,J)

The prayer in this writ petition reads as under:

'For the reasons stated in the accompanying affidavit, it is prayed that this Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent No.2 in threatening to take physical possession of the schedule RCC House bearing No. 2-69/C4 in Plot No.6, situated at Agathavarapadu Village, Peddakakani Mandal, Guntur District without issuing any notice and by proceeding with the sale of property under symbolic possession notice dated 27-07-2016 as illegal, arbitrary, unconstitutional and violation of the provisions of SARFESI Act and consequently direct the 2<sup>nd</sup> respondent not to take any coercive steps including taking of physical possession of the schedule property pending disposal of O.S.No.101/2016 on the file of the Principal Junior Civil Judge, Guntur and to pass such other order or orders as this Court may deemed fit and proper in the circumstances of the case.'

The petitioner claims to be the brother of one Sambi Reddy who executed a registered sale deed on 18.06.2012 and conveyed what is alleged to be a joint family property in favour of one Katipalli Koteswara Rao. Katipalli Koteswara Rao created a security interest over the said property while availing loan facilities from the Shriram Housing Finance Limited, Guntur, the second respondent. The petitioner states that he filed a suit in O.S.No.101 of 2016 on the file of the learned Principal Junior Civil Judge, Guntur, for partition of the aforestated joint family property.

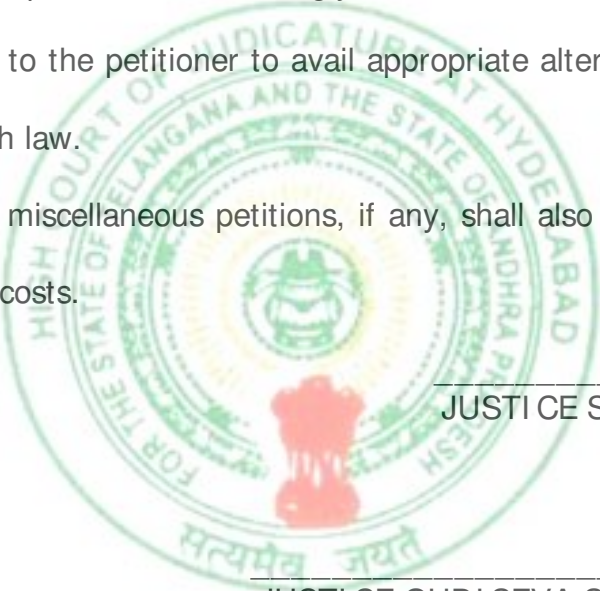
While so, the second respondent invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), and issued a possession notice under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 after following the due procedure. It appears that the second respondent also filed an application under Section 14 of the SARFAESI Act before the learned Principal Senior Civil Judge-cum-Chief Judicial

Magistrate, Guntur, in CrI.M.P.No.52 of 2016. This writ petition was filed apprehending a threat to the petitioner's alleged possession over the secured asset which is claimed to be a joint family property.

We are of the opinion that an effective alternate remedy is provided to the petitioner under Section 17 of the SARFAESI Act. It is for him to invoke the same before the jurisdictional Debts Recovery Tribunal. The issues and disputed questions of fact sought to be raised by him before us are not amenable to adjudication in a writ petition filed under Article 226 of the Constitution.

The writ petition is accordingly dismissed on this short ground leaving it open to the petitioner to avail appropriate alternate remedies in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed.  
No order as to costs.



\_\_\_\_\_  
JUSTICE SANJAY KUMAR

\_\_\_\_\_  
JUSTICE GUDI SEVA SHYAM PRASAD

Date:05.07.2017

GJ