

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

WRIT PETITION No.26121 of 2005

ORDER:-

This writ petition is filed for a mandamus, declaring that the 1st respondent having invoked the rights under SERFAESI Act, 2002, without exhausting the remedies available under the Act, cannot proceed simultaneously under the Civil Procedure Code by filing a suit.

The contention of the writ petitioner is that he has availed the loan from the respondent Bank which could not be paid for the reasons set out in the affidavit. The respondent bank has initiated proceedings under SERFAESI Act before the Debt Recovery Tribunal, which is pending. When the matter stood thus, the respondent bank simultaneously initiated civil proceedings by filing a suit in O.S.No.235 of 2005 on the file of the District Court, Anantapur for recovery of the amount, which is the subject matter of the SERFAESI proceedings. Therefore, it is contended that the civil suit is not maintainable under Section 34 of the SERFAESI Act, 2002.

If the suit is not maintainable in view of the provisions of the SERFAESI Act, it is always open for the petitioner to question the maintainability of suit.

I see no merit in the present writ petition and the same is accordingly dismissed. However, it is left open to the writ petitioner to raise all his objections in the suit filed by the respondent bank, if it is still pending. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 07.09.2017
Dsr