

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF  
ANDHRA PRADESH

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WRIT PETITION NO.16493 OF 2017

Between:

M/s.Sasanka Infra Projects Private Limited, Hyderabad

.. Petitioner

Vs.

The ICICI Bank Limited, Race Course Road, Vadodara  
Represented by its Authorised Officer  
and others

.. Respondents

DATE OF THE ORDER PRONOUNCED: 08.11.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE MS. JUSTICE J.UMA DEVI

1. Whether Reporters of Local newspapers  
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to  
see the fair copy of the judgment? Yes/No

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SANJAY KUMAR, J

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J.UMA DEVI, J

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION NO.16493 of 2017

ORDER: (per SK,J)

The prayer of the petitioner in this case reads as under:

'For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ, order or direction more in the nature of Writ of Mandamus declaring the action of the respondent bank in issuing the Notice under Section 13(4) R/w.Rule-8(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, R/w. Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, as illegal, arbitrary, unconstitutional violative of principles of natural justice, contrary to Section 13(3)(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and violative of Art.14, 21 and 300-A of the Constitution of India and consequently set aside the same, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

Sri V.Mallik, learned counsel representing Sri Gajanand Chakravarthi, learned counsel for the petitioner, would state that the petitioner submitted a representation to the demand notice dated 28.09.2016 issued by the ICICI Bank Limited under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), on 06.01.2017 and the bank issued a possession notice on 08.01.2017. Learned counsel would contend that once an objection or representation is made in response to the demand notice under Section 13(2) of the SARFAESI Act, the secured creditor cannot proceed further without first passing orders on the said representation under Section 13(3A) of the SARFAESI Act.

We are however not persuaded to agree. The scheme of the SARFAESI Act indicates that a demand notice under Section 13(2) would require the borrower to discharge, in full, his liabilities to the secured creditor within 60 days from the date of notice failing which the secured creditor would be entitled to exercise rights under Section 13(4) thereof. By implication, the borrower necessarily has to either raise his objections or make his representation in response to the demand notice under Section 13(2) of the SARFAESI Act within the said period of 60 days. If he does so, Section 13(3A) thereof requires the secured creditor to

communicate its response to either the representation or objections, as the case may be, within 15 days of the receipt of such representation or objections. The scheme of the Act does not lend itself to the interpretation that a borrower can, at his own convenience and leisure, raise his objections or file a representation in response to the demand notice under Section 13(2) of the SARFAESI Act at any stage of the proceedings. Such representation or objections must necessarily be filed by the borrower within the stipulated period of 60 days which is granted to him to discharge his liability. The contention of Sri Mallik, learned counsel, in this regard is therefore rejected.

Though the learned counsel would also raise an issue as to non-compliance by the bank with the guidelines issued by the Reserve Bank of India with regard to how working capital credit limits of less than Rs.10.00 crore should be dealt with, we are of the opinion that these issues of fact cannot be gone into by this Court in exercise of writ jurisdiction. When an efficacious alternative remedy is made available to a borrower under the SARFAESI Act, it is not for this Court, in exercise of its extraordinary jurisdiction, to enter upon such disputed issues of fact.

The writ petition is accordingly dismissed leaving it open to the petitioner to avail appropriate remedies in accordance with law. Needless to state, the time consumed by the petitioner in pursuing this litigation before this Court would have to be taken into consideration for the purpose of limitation in the event the petitioner invokes any statutory remedy as per law. It would be open to the bank to contest any such claim as to the limitation aspect on facts and in law.

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

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SANJAY KUMAR,J

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J.UMA DEVI ,J

Date:08.11.2017

GJ