THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT PETITION NO.2418 OF 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The petitioner seeks a mandamus to declare the action of the respondent in issuing possession notice dated 21.12.2016, for the immovable property situated at Rallaguda Shamshabad Village and Gram Panchayat, Shamshabad Mandal, Ranga Reddy District, for an extent of 150 square yards in plot No.54 and 150 square yards in plot No.47 totalling to 300 square yards or 251.04 square meters bearing H.No.23-72/6/A/1 in Survey Nos.210 to 213 in Sector-11 Ward & Block No.22, as illegal and arbitrary.

The petitioner claims to have purchased the subject property obtaining a house loan of Rs.81,46,231/- from the bank. On his own admission his account was declared as a Non-Performing Asset (NPA) by the respondent-Bank on 21.12.2016, on his failure to pay the instalments. The petitioner justifies his failure to pay the said amount to his taking up a new job and because of his wife's illness and the demonetization exercise. On receipt of the legal notice, the petitioner claims to have approached the office of the respondents requesting some time to clear the EMI dues, and to have expressed his readiness to clear future EMIs regularly. The respondent-bank issued the possession notice under Rule 8(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2002 (SARFAESI Rules) dated 21.12.2016 informing the petitioner that a demand notice was issued to him on 20.10.2016 calling upon him to repay the amount mentioned in the notice i.e., Rs.81,46,231/-; the petitioner and the guarantors had failed to repay the amount; notice was being given to the borrower, guarantors and the public that the bank had taken possession of the subject property described in the notice in the exercise of the powers conferred under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the SARFAESI Rules on 21.12.2016, and the borrower, guarantors and public were cautioned not to deal with the property, and were informed that any dealings with the property would be subject to the charge with the bank for Rs.81,46,231/-.

Sri P.Sudhakara Rao, learned counsel for the petitioner, would submit that a lenient view should be taken by this Court in view of the personal difficulties which the petitioner faces, more so as the petitioner's request to the bank was of no avail; and the bank cannot perforce take possession of the properties in each and every case of default in repayment.

The manner in which the bank should regulate its business, whether it should declare the asset as 'non-performing', and the mode and manner in which it should recover its dues are not matters which this Court, in the exercise of its powers of judicial review under Article 226 of the Constitution of India, would regulate. The petitioner admits that the amount mentioned in the aforesaid proceedings are due and repayable by him. Whether he should be granted further time to repay the amount, or whether the bank should proceed with further action to put the mortgaged property to sale, are all matters which this Court would not scrutinise in proceedings under Article 226 of the Constitution of India more so when, against the action taken by the bank under

Section 13(4) of the SARFAESI Act, the petitioner has the remedy of an appeal to the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

Leaving it open to the petitioner to avail his remedies under Section 17 of the SARFAESI Act, and to approach the DRT in this regard, the Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

25th January 2017
RRB