

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

Writ Petition No.23821 of 2017

ORDER: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

The jurisdiction of this Court was invoked by the petitioner, the daughter of the borrower, to declare the action of the 2nd respondent in issuing possession notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "SARFAESI Act" for short) dated 28.02.2017, against her father who died on 08.02.2016, as arbitrary and illegal. It is not in dispute that the borrower, late Sri Shashi Kumar Patkar, died on 08.02.2016; and the impugned proceedings (notice under Section 13(4) of the SARFAESI Act) was issued against a dead person.

Sri C.Raghu, Learned Counsel for the 2nd respondent, would, however, contend that, while late Sri Shashi Kumar Patkar was the borrower, the loan was sanctioned on the guarantee of the wife of Sri Shashi Kumar Patkar (mother of the petitioner). Learned Counsel submits that it would suffice if liberty is granted to the 2nd respondent to initiate proceedings either against the legal heirs of the deceased-borrower, and/or to continue proceedings already initiated against the wife of the deceased who stood as a guarantor for the loan facility extended to her husband.

The proceedings, under challenge in this Writ Petition, are those initiated against the deceased-borrower, and not against his wife. It is wholly unnecessary for us, therefore, to examine whether or not the 2nd respondent is entitled to proceed against the wife of the deceased who had guaranteed the loan. Suffice it, while setting aside the impugned proceedings, to make it clear that the order now passed by us shall not preclude the 2nd respondent from proceeding

against the legal heirs of the deceased-borrower in accordance with law.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

J. UMA DEVI, J

Date:30.08.2017.
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