

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT PETITION NO.4751 OF 2017

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

Heard Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the petitioners and Sri P.Hari Prasad, learned Standing Counsel for the respondents-State Bank of India and, with their consent, the Writ Petition is disposed of at the stage of admission.

Petitioners 1 and 2 are societies running educational institutions. The third petitioner is the Secretary of the first petitioner-Society, and the Vice-President of the second petitioner. Petitioners 4 to 7 are its office bearers. The third petitioner borrowed money from State Bank of India and, on the ground that the loan became a non-performing asset, action was initiated by the respondent-Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) for recovery of the amounts due. The petitioners have filed the present Writ Petition contending that the Intermediate Public Examinations, including practical examinations, are scheduled to be held from 03.02.2017, and would conclude by 19.03.2017.

During the pendency of this Writ Petition, an affidavit of undertaking was filed by the third petitioner requesting this Court to direct the respondent-Bank to remove the seal and lock over the schedule properties, and permit them to use the same for the purpose of housing the students in the hostel, and for conducting

the Intermediate Public Examination. They gave an unconditional undertaking that, if such permission was granted and if the respondent-Bank was directed to permit them to use the premises for the purpose of conducting Intermediate Public Examinations and to house the students in the hostels including mess facility, they would hand over the premises to the respondent-Bank on 20.03.2017 after completion of the examinations; they did not have any objection if the officials of the respondent-Bank supervised the entire process; and the affidavit was given without prejudice to the petitioners' right to repay the loan amount to the Bank, and reclaim the property after reconciliation of accounts.

Possession of the subject premises was taken by the respondent-Bank in terms of the order passed by the Chief Metropolitan Magistrate, Warangal under Section 14 of the SARFAESI Act. Against the action taken by the Bank, under Section 13(4) of the SARFAESI Act, the petitioners have the remedy of invoking the jurisdiction of Debts Recovery Tribunal under Section 17 of the SARFAESI Act. While petitioners 1 and 2 are no doubt educational institutions, the third petitioner is the borrower and it is his failure to repay the loan which had resulted in proceedings under Sections 13(4) and 14 of the SARFAESI Act being initiated.

Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the petitioners, would submit that, on 27.02.2017, the Board of Intermediate Education took a decision to shift the examination centre from the subject premises to another centre; while the petitioners may no longer require the premises to conduct the examinations, they require the premises

to house the students who would be appearing in the said examinations; and, as the examinations would conclude by 19.03.2017, the petitioners would voluntarily and unconditionally vacate the premises latest by 20.03.2017.

Sri P.Hari Prasad, learned Standing Counsel for the respondents, would submit that possession of the subject premises was taken only after conducting panchanama on 24.01.2017; the students of the petitioners' Junior College had approached the District Collector, and the premises was unlocked on 28.01.2017; their belongings were handed over to each of these students on that day itself; and, as the students must have made alternative arrangements in the *interregnum*, it is wholly unnecessary for the premises to be handed over to the petitioners on this ground, more so as the amounts due from them to the respondent-Bank is in excess of Rs.3 crores.

While we would not, in proceedings under Article 226 of the Constitution of India, undertake an examination of the petitioners' need to retain the subject premises upto 20.03.2017, to accommodate students who are appearing for the Intermediate Public Examinations, suffice it if respondents 1 and 2 are directed to consider the petitioners' request for being handed over the subject premises, to accommodate the students who appear in the Intermediate Public Examinations, in the light of the undertaking furnished by them to this Court (a copy of which has been handed over to learned Standing Counsel for the respondent-Bank). As examinations have commenced today, the respondent-Bank shall consider the petitioners' request, take a decision in this regard on

or before 04.03.2017, and communicate their decision to the petitioners.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

1st March 2017

NOTE: Issue CC by tomorrow
B/O
RRB

