THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE M. GANGA RAO

Writ Petition No.33050 OF 2017

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

In this writ petition, the action of the 2nd respondent in issuing a Section 13(2) notice is questioned as being arbitrary and illegal. By its proceedings dated 1.6.2017, the 2nd respondent issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") calling upon the petitioner to pay Rs. 29,94,220/- as on 31.5.2017, with interest at the contractual rate from 1.6.2017 and incidental expenses and costs, within sixty (60) days from the date of the notice. The petitioner was informed that failure to do so would result in the 2nd respondent exercising its rights under Section 13(4) of the SARFAESI Act.

The only contention urged before us by Sri K. Prashant, learned counsel for the petitioner, is that the subject lands are agricultural lands and are exempt from the purview of the SARFAESI Act in view of Section 31(i) thereof. It is, however, not disputed before us that the subject lands were mortgaged by the petitioner with the 2nd respondent as security for the loan taken by him from the 2nd respondent for carrying on dairy business.

Section 13(2) obligates the borrower, on receipt of a notice from the bank, to discharge his liability within sixty days from the date of the notice failing which the bank is entitled to exercise its rights under Section 13(4) of the SARFAESI Act. Section 13(3A) stipulates that if, on receipt of the notice under Sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and, if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate, within 15 days of receipt of the representation or objection, the reasons for non-acceptance of the representation or objection to the borrower. Section 13(3A) confers a right on the borrower to submit a representation to the bank raising all such objections as are available to them in law.

The petitioner's complaint in this writ petition can also be made the subject matter of a representation which the borrower can file under Section 13(3A) of the SARFAESI Act. We see no reason, therefore, to interfere with the action of the 2nd respondent-bank in issuing a notice under Section 13(2) of the SARFAESI Act.

Granting liberty to the petitioner to avail his remedies under Section 13(3A) of the SARFAESI Act, to file their objection to the Section 13(2) notice, the Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. GANGA RAO, J)

4th October, 2017

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Date: 4.10.2017

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