THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>WRIT PETITION No. 1527 of 2017</u>

<u>ORDER:</u> ***(Per VRS,J)***

Challenging an order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, 2002, an Educational Institution has come up with the above writ petition.

2. Heard Mr. V. Ravinder Rao, learned senior counsel appearing for the petitioner. Mr. Ambadipudi Satyanarayana, learned standing counsel for City Union Bank Limited, takes notice for the respondents 1 and 2.

3. The primary contention of the learned senior counsel for the petitioner is that the procedure prescribed under the proviso to sub-section (1) of Section 14 has not been followed by the respondent-Bank, when they moved an application under Section 14. According to the learned senior counsel, the application for possession under Section 14 was not accompanied by an affidavit duly affirmed by the Authorized Officer and indicating the series of steps taken from Section 13(2) up to Section 13(4). Therefore, the learned senior

counsel contended that the amendment made to Section 14 (1) under the Central Act 1 of 13 has not been followed.

4. However, we pointed out that all these objections can be taken by the borrowers before the Debts Recovery Tribunal in an appeal filed under Section 17. In response to this query, the learned senior counsel contended that under sub-section (3) of Section 14, no act of the Chief Judicial Magistrate or the District Magistrate done, in pursuance of this Section, shall be called in question in any Court or before any Authority. Therefore, the contention of the learned senior counsel is that the jurisdiction of the Tribunal stands ousted by Section 14(3).

5. But, we do not agree. The remedy of appeal under Section 17(1) is available to any person including a borrower, as against any of the measures referred to in sub-section (4) of Section 13. An application under Section 14(1) is actually a sequel to the measures taken under Section 13(4). As a matter of fact, Section 13(4) confers a right upon the secured creditor to take one or more of measures indicated therein and, hence, it is the substantive provision that confers a right. Section 14 merely speaks about one of the methods for enforcing such rights. Therefore, the prohibition under sub-section (3) of Section 14, which may curtail a mere objection to

the procedure, will not take away the jurisdiction of the Tribunal, with respect to a substantive right. Hence, we are of the considered view that the petitioner should move the Debts Recovery Tribunal. However, in view of the fact that the petitioner is running an Educational Institution, claiming to have about a thousand students, we grant 15 days time for the petitioner to move the Debts Recovery Tribunal and secure an interim order of protection. Until then, namely, 23.01.2017, the impugned order shall not be given effect.

6. With the above directions, the Writ Petition is disposed of.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

6th January, 2017
cbs

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