THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 15177 of 2014

ORDER: (*per Hon'ble Sri Justice Sanjay Kumar*)

This writ petition was filed assailing the order dated 24.05.2014 passed by the Collector and District Magistrate, SPSR Nellore District, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

By order dated 10.06.2014, this Court granted interim suspension of the impugned order pending disposal of the writ petition.

The grievance of the petitioner was that it was not put on notice by the Collector and District Magistrate, SPSR Nellore District, while entertaining the application filed by the State Bank of India, the first respondent, under Section 14 of the SARFAESI Act.

During the course of arguments, Sri B. Chandrasen Reddy, learned counsel for the petitioner, contended that his client was reliably informed that the due procedure was not followed by the Bank while making the application under Section 14 of the SARFAESI Act.

Pertinent to note, Section 14 of the SARFAESI Act was amended w.e.f. 15.01.2013 *vide* Act No.1 of 2013. After the said amendment, any application by the secured creditor under Section 14 of the SARFAESI Act has to be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor containing requisite declarations as set out in clauses (i) to (ix) of the first proviso inserted in the proviso.

Sri Maruthi Jadhav, learned counsel representing Sri B.S.Prasad, learned counsel for the State Bank of India, was therefore directed to produce the affidavit filed in support of the application, whereupon the impugned order dated 24.05.2014 was passed by the Collector and District Magistrate, SPSR Nellore District.

Today, Sri Maruthi Jadhav, learned counsel, produced before us a copy of the letter dated 11.04.2014 addressed by the Authorised Officer, State Bank of India, Chinna Bazar Branch, Nellore District, to the Collector and District Magistrate, SPSR Nellore District.

By the said letter, the Bank requested the Collector to intervene as provided under Section 14 of the SARFAESI Act and take possession of the properties mentioned in the schedule of properties appended to the letter. This letter was not in the form of an affidavit and the requisite declarations as set out in clauses (i) to (ix) referred to supra also do not find mention therein. In effect, the Bank failed to adhere to the mandatory procedure as per the amended provisions of the SARFAESI Act. On the strength of this defective application, the Collector and District Magistrate passed the impugned order dated 24.05.2014. Though a specific pleading to this effect does not find mention in the affidavit filed in support of the writ petition, we are of the opinion that the Bank, being the secured creditor, must necessarily follow the prescribed procedure while taking recourse to the provisions of the SARFAESI Act. In the present case, we find that the State Bank of India did not do so.

On this short ground, the writ petition is allowed setting aside the order dated 24.05.2014 passed by the Collector and District Magistrate, SPSR Nellore District. This order shall however not preclude the Bank from making a fresh application in accordance with the due procedure under Section 14 of the SARFAESI Act before the competent authority.

Pending Miscellaneous Petitions shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 27.07.2017

JUSTICE GUDISEVA SHYAM PRASAD

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