THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.13111 of 2017

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

Heard Sri P.R.K. Amarendra Kumar, learned counsel for the petitioner, and Sri M.Srikanth Reddy, learned Standing Counsel for the 2nd respondent-bank and, with their consent, the writ petition is disposed of at the stage of admission. The relief sought for in this writ petition is to declare the order passed by the Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Ongole, in Criminal M.P. No. 64 of 2017 dated 2.3.2017, as arbitrary and illegal.

The petitioner approached the 2nd respondent-bank for a housing loan for construction of a house in the year 2009 mortgaging the subject property by deposit of title deeds. On a loan being sanctioned, the petitioner claims to have regularly repaid the monthly instalments upto 2014, but to have defaulted thereafter as she was undergoing a financial crisis. On the 2nd respondent-bank initiating proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), and on a notice being issued to her under Section 13(4), the petitioner invoked the jurisdiction of the Debts Recovery Tribunal, Visakhapatnam, by filing S.A. No. 270 of 2014. An order of status-quo was passed in I.A. No. 716 of 2014 in S.A. No. 270 of 2014 dated 10.11.2014 on condition that the petitioner deposits 10% of the notice amount as mentioned in the notice dated 1.10.2014 within 15 days from the date of the order, and another 10% of the notice amount within 15 days thereafter, failing which the order of status-quo would stand vacated.

The petitioner claims to have paid 20% of the amount, on 10.12.2014 for a sum of Rs. 1,42,000/-, to the bank. It is stated that

S.A. No. 270 of 2014 is still pending before the Debts Recovery Tribunal at Visakhapatnam, and stands posted to 25.4.2017.

While matters stood thus, proceedings under Section 14 of the SARFAESI Act was instituted by the 2nd respondent-bank before the Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Ongole and by order, in Crl.M.P. No. 64 of 2017 dated 2.3.2017, the Chief Judicial Magistrate issued a warrant to the Advocate Commissioner directing him to take possession of the subject property and deliver it to the 2nd respondent-bank.

The complaint of Sri P.R.K. Amarendra Kumar, learned counsel for the petitioner, is that the petitioner had complied with the order of the Debt Recovery Tribunal and, despite the order of status-quo passed by the Debts Recovery Tribunal, Visakhapatnam, the 2nd respondent-bank had obtained an order under Section 14 of the SARFAESI Act, and was seeking to dispossess the petitioner from the subject property.

When the matter came up yesterday, Sri M. Srikanth Reddy, learned Standing Counsel for the 2nd respondent-bank, sought time to obtain instructions whether or not the conditional order passed by the Debts Recovery Tribunal has been complied with. Today, the learned Standing Counsel, would fairly state that, since the petitioner had deposited 20% of the amount as directed by the Debts Recovery Tribunal, the order of status-quo continues to remain in force; and, so long as the order of status-quo continues to remain in force, the 2nd respondent-bank would not take any coercive steps to dispossess the petitioner from the subject property.

As an order has already been passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, without noticing the order of status-quo passed by the Debts Recovery Tribunal earlier, we consider it appropriate to set aside the order of the Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Ongole in Crl.M.P. No. 64 of 2017 dated 2.3.2017. It is made clear that the order now passed by us shall not preclude the 2nd respondent-bank, after the order of status-quo is vacated by the Debts Recovery Tribunal or after the proceedings before the Debts Recovery Tribunal are concluded, from taking action in accordance with law, if need be, by way of a petition under Section 14 of the SARFAESI Act.

The writ petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

21.4.2017

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