THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.30578 of 2015

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

Heard Sri K.C. Reddy, learned counsel for the petitioner, and Sri G.Kalyan Chakravarthi, learned Standing Counsel for the 1st respondent-bank and, with their consent, the writ petition is disposed of at the interlocutory stage.

The action of the 1st respondent-bank, in seeking to dispossess the petitioner from the subject property without issuing any notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and without passing any order under Section 13(4), is questioned in this writ petition as being arbitrary and illegal.

The petitioner and six others are the joint owners of the subject house. All the seven together obtained a housing loan from the 1st respondent-bank for a sum in excess of Rs.1.5 crores. Thereafter, they sought another loan for Rs. 15,86,491/-, the loan period of which was from 10.4.2009 to 10.4.2014. This amount of Rs. 15,86,491/- was advanced by the 1st respondent by remitting the said amount into the savings bank account of the loanees, and is said to have been adjusted against the earlier loan account for a sum exceeding Rs. 1.53 crores.

The petitioner filed W.P. No. 32345 of 2010 which was dismissed as infructuous on 15.6.2011.The fact that the subject property was mortgaged, by deposit of title deeds, is admitted in the writ affidavit, and it is stated that this was done for availing the first loan. The petitioner claims to have come to know that the 1st respondent-bank had asked the tenant to vacate the premises, and had pasted certain papers on the wall invoking Rule 8 of the Security Interest (Enforcement) Rules, 2002. This action of the bank is questioned on the ground that no notice under Section 13(2) of the SARFAESI Act was served by the bank authorities on the petitioner, nor was any order under Section 13(4) passed against him.

In the counter affidavit, filed on behalf of the 1st respondent-bank, it is stated that the subject property was leased to M/s. Nuevora Analytics Technologies Pvt. Ltd. by registered lease deed No. 1397 of 2013 dated 31.1.2013 without intimating the bank; the said lease was not valid in view of the earlier charge created in favour of the bank, and as per Section 65-A of the Transfer of Property Act; while notices were issued under Section 13(2) of the Securitization Act on 30.4.2015, as certain notices issued were returned to the sender, the bank had taken substituted service of notice in a Telugu daily newspaper on 20.5.2015 and, after issuance of the 13(2) notice, the bank had issued 13(4) notice on 8.9.2015, and had published a notice in Andhra Prabha Telugu daily newspaper on 12.9.2015. Rule 8 notice was also issued to the borrowers on 7.9.2015, and the bank had complied with all the mandatory provisions under the Securitization Act.

Section 14(1) stipulates that, where possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him, (a) take possession of such asset and documents relating thereto; and (b) forward such assets and documents to the secured creditor.

It is only on compliance with the requirements of Section 14 of the SARFAESI Act, can the 1st respondent-bank take possession of the subject property. In terms of Section 14(1) not only the borrowers, but also the registered lessee, is required to be put on notice and be given an opportunity of being heard. It is only thereafter and if any order is passed against them, can the borrower/tenant avail their further legal remedies. Even against the order passed under Section 13(4) of the SARFAESI Act, the borrower has the remedy of preferring an appeal under Section 17 of the SARFAESI Act, as he is a person aggrieved thereby. While the law declared by the Supreme Court in **Harshad Govardhan Sondagar vs. International Assets Re-construction Company Ltd.**[1] is that the tenant cannot avail the remedy under Section 17, against the order passed by the Magistrate under Section 14, Section 17 of the SARFAESI Act was subsequently amended, and, under Section 17(4)(A) as inserted by Act 44 of 2016 with effect from 16.8.2016, the lessee too has the remedy of making an application under Section 17(1) of the SARFAESI Act. As the 1st respondent-bank has not initiated any action, in terms of Section 14 of the SARFAESI Act, the writ petition as filed is premature.

Sri G. Kalyan Chakravarthy, learned counsel for the 1st respondent-bank, would submit that the 1st respondent would not take any coercive steps to take over possession of the subject property,

[1] (2014) 6 SCC page-1

and would resort to the procedure stipulated under Section 14 of the Act. Needless to state that, before any order is passed under Section 14, the borrowers and the registered lessee shall be put on notice and shall be given an opportunity of being heard by the Magistrate concerned.

Leaving it open to the petitioner herein to contest the application under Section 14, as and when made by the 1st respondent, the writ petition is disposed of. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

22nd February, 2017

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Date: 22.2.2017

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