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

WRIT PETITION No. 39673 of 2015

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

This writ petition was filed assailing the possession notice dated 23.11.2015 issued by the Standard Chartered Bank under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

By order dated 08.12.2015, this Court granted interim stay of all further proceedings pursuant to the impugned possession notice subject to the petitioner depositing a sum of Rs.5,00,000/- with the respondent Bank within a time frame. This conditional order was admittedly complied with.

Perusal of the impugned possession notice reflects that it was issued pursuant to the demand notice under Section 13(2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') dating back to 13.04.2011.

The petitioner alleged that the said notice was never served upon him.

In the counter filed in support of W.V.M.P.No.1934 of 2016 filed by it to vacate the aforestated interim order, the respondent Bank admitted that it could not serve the demand notice dated 13.04.2011 upon the petitioner through conventional means and therefore took recourse to publication in newspapers.

This being one aspect of the matter, we are of the opinion that having issued a demand notice on 13.04.2011 in accordance with the provisions of Section 13(2) of the SARFAESI Act calling upon the petitioner to remit the outstanding dues within 60 days from the date of receipt of the said notice, it is not open to the respondent Bank to sleep over the matter for over four years and proceed further on the strength of the said demand notice. As the time stipulated under the demand notice is a limited period of 60 days, necessary measures thereafter have to be initiated by the secured creditor with expedition. It would not be open to the secured creditor to sleep over the matter having issued such a demand notice and thereafter seek to take further steps after a long lapse of four years. On this short ground, we are of the opinion that the impugned possession notice cannot withstand judicial scrutiny and it is accordingly set aside.

The writ petition is therefore allowed leaving it open to the respondent Bank to initiate further proceedings afresh in accordance with the due procedure laid down by law, if warranted.

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

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JUSTICE SANJAY KUMAR

Date: 06.07.2017

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JUSTICE GUDISEVA SHYAM PRASAD

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