

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.10344 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the order in CrI.M.P.No.59 of 2016 dated 02.12.2016 on the file of Chief Judicial Magistrate at Warangal, appointing an Advocate Commissioner to take physical possession of the schedule property by taking inventory of articles, if any, under the cover of panchanama and hand over the same to Authorized Officer in the presence of the petitioner, in an application filed by State Bank of India/ respondent No.2.

The petitioner herein is the borrower and availed cash credit facility from the second respondent/bank. As the petitioner failed to discharge the debt due, the second respondent/bank declared the debt as Non Performing Asset and initiated proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act). Even after issuing notice under 13(2) of the SARFAESI Act, the petitioner did not discharge the debt due to the bank. Thereupon, the second respondent initiated proceedings under Section 14 of the SARFAESI Act, to take possession over the secured asset from the petitioner through the Chief Judicial Magistrate, at Warangal.

The main ground urged before this Court is that, the order passed in CrI.M.P.No.59 of 2016 dated 02.12.2016 by the Chief Judicial Magistrate at Warangal, is without jurisdiction, as the property is situated in Bhupalapally Village, Gram Panchayat & Mandal, Bhupalapally District.

Though, the districts are separated and constituted as revenue districts separately, the Judicial Districts are one and the same and the Chief Judicial Magistrate, Warangal is the competent authority to pass order under Section 14 of SARFAESI Act, since the judicial districts are not separated so far. Therefore, on the ground of lack of jurisdiction over the property which is situated within Bhupalapally Villlage and Revenue District, the order under challenge cannot be set-aside exercising jurisdiction under Section 482 Cr.P.C.

The second respondent/bank initiated proceedings under Section 13 of SARFAESI Act, declaring the asset as Non Performing Asset and issued notice under Section 13(2) of SARFAESI Act calling upon the petitioner to discharge the debt due within the specified time. But, the petitioner failed to discharge the debt due. Thereupon, bank filed a petition under Section 13(4) r/w Section 14 of SARFAESI Act to take possession and management of the property mortgaged i.e. secured asset with the second respondent. Therefore, virtually the order is under Section 13(4) of SARFAESI Act, passed by exercising power under Section 14 of SARFAESI Act. Such order can be challenged by filing petition under Section 17(1) of SARFAESI Act by paying appropriate fee, prescribed in the Act and the order passed by the Chief Judicial Magistrate at Warangal by exercising power under Section 14 of SARFAESI Act cannot be quashed, in view of Section 14(3) of SARFAESI Act, which specifically says that, no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority. Therefore, on this ground also, the criminal petition is

also not maintainable. Even otherwise, when a statutory remedy is provided under special statute i.e. a petition to Debt Recovery Tribunal under Section 17(1) of SARFAESI Act, this Court cannot exercise power under Section 482 Cr.P.C to quash the proceedings, in view of the law declared by the Apex Court ***Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others***¹, wherein it was held as follows:

"It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will no inconsistency between Sections 482 and 397 (2) Cr.P.C."

Applying the principle laid down by the Apex Court in the above judgment, I find no ground to quash the proceedings in Crl.M.P.No.59 of 2016 dated 02.12.2016 on the file of Chief Judicial Magistrate at Warangal. However, liberty is given to the petitioner to file appropriate application before the Debt Recovery Tribunal under Section 17(1) of SARFAESI Act.

With the above observation, the criminal petition is dismissed, at the stage of admission.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:04.12.2017

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¹ AIR 1983 SC 67