THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.37954 of 2017

ORDER: (per Justice Sanjay Kumar)

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Mandamus, declaring the issuance of Second Possession Notice dated 13.09.2017 the same was published in Namaste Telangana Telugu Daily News paper on 08.10.2017 in connection with the petitioner mortgaged property bearing Door No.15-2-297, Rangampet, Warangal under loan account No.73063389692 while the First Possession Notice dt. 20.05.2017 issued and pending the same in connection with same property and same loan account, it is illegal, in violation of law and procedure and violation of principles of natural justice including the violation of the various articles under the Constitution of India including the violation of SARFAESI Act and RBI guidelines and consequently set aside the Second Possession Notice dated 13.09.2017 in the interest of justice and to pass such other order or orders that the Hon'ble Court may deem fit and proper in the interest of justice."

Despite service of notice, the Andhra Pradesh Grameena Vikas Bank, the second and third respondents herein, did not choose to enter appearance before this Court.

Sri R.Siva Sai Swaroop, learned counsel for the petitioner, would contend that the respondent bank is issuing one possession notice after the other under Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), which is contrary to the statutory intendment. He would point out that earlier the respondent bank issued possession notice dated 20.05.2017 and though the same was never set aside by a competent Court or Tribunal, the respondent bank issued another possession notice dated 13.09.2017.

Though the learned counsel does have a point in saying that the scheme of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') and the Rules of 2002 framed thereunder do not contemplate issuance of a second possession notice under Section 13(4) read with Rules 8(1) and (2), no actual prejudice is caused by doing so.

Be it noted that in terms of the law laid down by the Supreme Court in Standard Chartered Bank v. V. Noble Kumar[1], the secured creditor is not entitled to take forcible possession by virtue of a possession notice issued under Rule 8(1) and (2) of the Rules of 2002 and in the event of resistance by the person in possession, be it the borrower or a third party, the secured creditor necessarily has to take recourse to Section 14 of the SARFAESI Act.

We are therefore of the opinion that the respondent bank cannot achieve any purpose by issuing one possession notice after the other under Rule 8(1) and (2) of the Rules of 2002. If the petitioner fails to deliver possession in response thereto, the respondent bank would necessarily have to take recourse to measures under Section 14 of the SARFAESI Act.

Making this position clear, the writ petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 21.12.2017
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[1] (2013) 9 SCC 620