THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION NO.39458 OF 2017

ORDER: {Per the Hon'ble Sri Justice Sanjay Kumar}

The prayer of the petitioners in this case reads as under.

> "For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of respondent in not giving an opportunity to the petitioner for repaying loan amount for Equal Monthly Instalments which become due as on 03.08.2017 the date of Demand, as illegal, arbitrary and against the principles of natural justice and consequently direct the respondent-Bank to fix the monthly instalments to pay the rest of the loan amounts and pass appropriate orders, which this Hon'ble Court deem fit and proper in the circumstances of the case, in the interest of justice."

The Indian Bank seems to have filed a petition under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"), on 03.08.2017 before the learned Chief Judicial Magistrate, Ananthapur, in Crl.MP.No.412 of 2017. The learned Chief Judicial Magistrate, Ananthapur, passed an order thereon on 25.10.2017 appointing an Advocate-Commissioner to take possession of the secured asset and deliver the same to the Indian Bank. This order is not subjected to challenge before us.

Perusal of the averments in the application filed by the bank under Section 14 of the SARFAESI Act reflects that demand notice dated 17.08.2013 was issued by it under Section 13(2) of the

SARFAESI Act and thereafter, a possession notice was issued on 31.01.2014 under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 read with Section 13(4) of the SARFAESI Act. It was only thereafter that the bank initiated measures under Section 14 of the SARFAESI Act culminating in the order dated 25.10.2017 of the learned Chief Judicial Magistrate, Ananthapur, in Crl.MP.No.412 of 2017.

Without reference to any of the aforestated proceedings, the petitioners baldly seek an opportunity to repay the loan amount in equal monthly instalments.

Once the loan account of the petitioners was declared a non-performing asset and recovery proceedings were initiated by the Indian Bank under the SARFAESI Act, the petitioners cannot claim any right as a matter of course to repay the loan in equal monthly instalments. The prayer of the petitioners is therefore utterly misconceived.

The Writ Petition is accordingly dismissed on this short ground. This order shall not preclude the petitioners from seeking appropriate remedies in accordance with law before the appropriate forum, if so advised. Pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

(SANJAY KUMAR, J)

(J.UMA DEVI, J)

26th December 2017
RRB