HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.1039 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

This writ petition was filed with the following prayer:

> "For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or directions more particularly one in the nature of Writ of Mandamus, declaring the action of the respondent No.1 in making efforts to take possession of the petitioners property house bearing No.2-7-6/2, admeasuring 192 Sy.yards, situated at Bharat Nagar, Uppal Kalan, Ranga Reddy District, TS, having been acquired the same by virtue of inheritance from their grand father, under the guise of second commissioner's warrant dated 20-12-2017 issued in Crl.M.P.No.993 U/s.14(1) and (2) of SARFAESI Act and notice dated 27-12-2017 issued by the advocate commissioner, as illegal, arbitrary, contrary to the provisions of SARFAESI Act and violation of the Articles of Constitution of India and set aside the same as the second commissioner's warrant dated 20-12-2017 is not maintainable without issuing a fresh notice under section 13(2) of SARFAESI Act and consequently direct the respondent No.1 and their subordinates etc., not to interfere with the petitioners peaceful possession and enjoyment over the house bearing No.2-7-6/2, admeasuring 192 Sy.yards situated at Bharat Nagar, Uppal Kalan, Ranga Reddy District, TS, in any manner henceforth and pass such other order or orders."

By order dated 05.01.2018, this Court granted interim stay. This order reads as under:

> "Sri Bethi Venkateswarlu, learned counsel, would rely upon KOTAK MAHINDRA BANK LIMITED V/s. THE STATION HOUSE OFFICER (LAWS(APH) 2015 7 22) which held to the effect that once an order is passed under Sections 14(1) and (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act') by the Magistrate concerned, the secured creditor

> cannot thereafter approach the Magistrate under the same provisions.
>
> In the light of this judgment, the validity of the second application filed by the Andhra Bank notwithstanding the earlier order secured by it on 18.02.2017 requires examination.
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> There shall accordingly be interim stay as prayed for."

It may however be noted that the aforestated decision relied upon does not support the claim of the petitioners that a secured creditor cannot maintain a second application under Section 14 of the SARFAESI Act. Reference may be made to the observations of the Division Bench in paragraph 37 of the said order to the following effect:

> "It is only if the Chief Metropolitan Magistrate had passed an order merely under Section 14(1) of the SARFAESI Act and, if the said order had not been complied with, could his jurisdiction, under Section 14(2) of the SARFAESI Act, have been invoked. By his order, in Crl.M.P.No.123 of 2013 dated 26.03.2013, the Chief Metropolitan Magistrate, Cyberabad directed the advocate Commissioner to take possession of the property and hand it over to the petitioner; permitted the advocate commissioner, if required, to take necessary assistance from the concerned police officers after putting them on notice; and, if further required, also to break open the locks of the premises. The order of the Chief Metropolitan Magistrate, in Crl.M.P.No.123 of 2013 dated 26.03.2013, is an order passed both under Section 14(1) and (2) of the SARFAESI Act. As they have already exhausted their remedy under clauses (1) and (2) of Section 14 of the SARFAESI Act, the petitioner cannot again be relegated to invoke the jurisdiction of the Chief Metropolitan Magistrate under Section 14(2) of the SARFAESI Act. As the said order of the Chief Metropolitan Magistrate dated 26.03.2013 was interdicted by the interlocutory order of this Court, in W.P.No.14938 of 2013 dated 15.05.2013, the petitioner-bank no longer has the remedy of approaching the Chief Metropolitan Magistrate under Section 14(2) of the SARFAESI Act, and the only remedy available to them is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India."

It is clear from the aforestated observations that the Division Bench merely held to the effect that when an order was passed by the Magistrate concerned both under Sections 14(1) and (2) of the SARFAESI Act, the secured creditor could not again be relegated to invoke the jurisdiction of the Magistrate under Section 14(2) of the SARFAESI Act. The Division Bench did not hold to the effect that in the event the secured creditor failed to obtain the possession of the secured asset pursuant to an order passed by the Magistrate under Section 14 of the SARFAESI Act, he would be precluded from filing an application afresh for the same purpose. On the other hand, this Court held in M/s.Sri Balaji Centrifugal Castings v. M/s.ICICI Bank Limited[1] that such an application would be maintainable.

In that view of the matter, the grievance of the petitioners with regard to the second commissioner's warrant under Section 14 of the SARFAESI Act is not tenable.

The writ petition is devoid of merit and is accordingly dismissed.

Interim order dated 05.01.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

Dt: 20.07.2018.
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[1] W.P.No.18947 of 2018 decided on 12.07.2018