THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.1766 OF 2018

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

The prayer of the petitioner reads as under:

> "For the reasons stated in the accompanying affidavit and humbly pray 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 the respondents in insisting me to vacate the premises from my residential house consisting 6 rooms in admeasuring an extent of 0.20 cents or 121 Sq yds, in Sy.No.93, situated in Kagithalpur Grampanchayat, Manubolu Mandal, SPSR Nellore District, as illegal, arbitrary, contrary to law, unconstitutional and violative of the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, rules framed there under and offends the Articles 14, 21 and 300-A of Constitution of India and consequently direct the respondents not to dispossess me from my house property and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstance of the case."

From the record we find that the learned Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore, was approached by the State Bank of India, the respondents 1 to 3 herein, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), *vide* Crl.M.P.No.218 of 2017, and pursuant to the order dated 27.11.2017 passed therein, an Advocate Commissioner was appointed to take actual physical possession of the secured asset belonging to the petitioner. Significantly, no challenge has been laid by the petitioner to the aforestated order passed under Section 14 of the SARFAESI Act.

However, as the respondent bank is yet to take concrete measures to bring the secured asset to sale and as Sri Satheesh Kumar Eerla, learned counsel for the petitioner, would state that his client would clear the entire outstanding dues of the respondent bank given sufficient time, we are of the opinion that an opportunity may be afforded to the petitioner to prove her *bona fides* in this regard.

The writ petition is accordingly disposed of with the following directions:

The petitioner shall pay 50% of the total outstanding amount due and payable by her to the respondent bank on or before 28.02.2018. The balance 50% of the outstandings due and payable, including the incidental costs and expenses incurred by the bank, shall be paid on or before 31.03.2018. Till the said date, the order dated 27.11.2017 passed by the learned Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore, in Crl.M.P.No.218 of 2017 shall remain in abeyance. However, in the event of default in payment of either of the aforestated instalments, this order shall stand withdrawn without further reference to this Court and the respondent bank would be at liberty to take further steps in accordance with the due procedure laid down in the SARFAESI Act. It is made clear that no extension of time shall be granted to the petitioner and no further indulgence shall be shown to her in the context of the time stipulations fixed above.

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

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SANJAY KUMAR,J

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P. KESHAVA RAO,J

Date:23.01.2018

Note:-

Issue CC by tomorrow.

(B/o)

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