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

WRIT PETITION No. 2916 OF 2018

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

The prayer in this writ petition reads as under:

> "For the reasons stated in the accompanying affidavit it is therefore prayed that the Hon'ble Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of Certiorari to call for the records relating to the proceedings of Debts Recovery Tribunal-I, at Hyderabad vide order dated 23.01.2018 passed in SAIR.No.16/2018 and quash the same as arbitrary, illegal, capricious and violative of principles of natural justice and against the provisions of the Security Interest (Enforcement) Rules, 2002 under SARFAESI Act and consequently declare that the proceedings initiated by the respondent No.1 under SARFAESI Act in respect of Ac.3.27 gts of land in Survey No.148/U, 148/UU, 148/RU at Gollavani Chalka of Kismathpur Village, Rajendranagar Mandal, Ranga Reddy district is null and valid as no valid security interest is created in its favour and pass such other order or orders as this Hon'ble Court may deems fit in the circumstances of the case and in the interest of justice."

Heard Smt. V. Dyumani, learned counsel for the petitioner, and Sri M.Srikanth Reddy, learned counsel for the State Bank of India, the first respondent herein. As this Court does not propose to go into the merits of the matter and the only issue that arise for consideration at this stage is whether the Debts Recovery Tribunal-I, Hyderabad, (for short, "the Tribunal") was correct in law in assuming that the case filed before it was not maintainable, there is no necessity to either put the 2nd and 3rd respondents herein on notice or afford them an opportunity of hearing.

By the order dated 23.01.2018 passed in SAIR.No.16 of 2018, the Tribunal held that a securitization application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act, 2002") would not be maintainable as against an order passed under Section 14 thereof. This order was passed by the Tribunal at the initial stage without even ordering notice to the State Bank of India, the first respondent therein. Perhaps, if the Tribunal had ordered notice, one of the parties appearing before it would have brought it to the notice of the Tribunal that a securitization application is very much maintainable against an order passed by the Magistrate concerned in exercise of power under Section 14 of the SARFAESI Act, 2002. The law laid down by the Supreme Court in **United Bank of India v. Satyawati Tondon and others**[1] and **Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others**[2] puts this issue beyond the pale of doubt. In this regard, the observations made by the Supreme Court in **Satyawati Tondon (1 supra)** in para 42 are of relevance and are extracted hereunder:

> "There is another reason why the impugned order should be set aside. If respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

Similarly, in **Kanaiyalal Lalchand Sachdev (2 supra)** the Supreme Court observed as under:

> "We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

In the light of the aforestated authoritative pronouncements by the highest Court in the land as to the maintainability of a securitization application under Section 17 of the SARFAESI Act, 2002, against an order passed under Section 14 thereof, the understanding of the Tribunal to the contrary cannot be countenanced.

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[1] (2010) 8 SCC 110
[2] (2011) 2 SCC 782

The writ petition is accordingly allowed setting aside the docket order dated 23.01.2018. The matter is remitted to the file of the Tribunal for consideration of the securitization application filed by the petitioner herein under Section 17 of the SARFAESI Act, 2002, along with the interlocutory applications filed therein, on merits and in accordance with law.

As Smt. V. Dyumani, learned counsel, would state that there is a possibility of the petitioner being dispossessed pursuant to the order dated 18.11.2017 passed by the learned Chief Metropolitan Magistrate at L.B. Nagar, Ranga Reddy District, in Crl.M.P.No.1051 of 2017, in exercise of power under Section 14 of the SARFAESI Act, 2002, there shall be an order of *status quo* with regard to possession till the Tribunal takes up and passes appropriate orders in the I.A. filed by the petitioner herein in the securitization application bearing SAIR.No.16 of 2018. Needless to state, we have not entered into the merits of the matter and this order of *status quo* is passed only to secure the interest of the petitioner for the time being. The Tribunal shall therefore not be influenced by the passing of the said order and shall consider any plea on the part of the petitioner for interim relief on its own merits and in accordance with law.

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

SANJAY KUMAR, J

P. KESHAVA RAO, J

Date: 01.02.2018
ES/CCM

Note: Furnish C.C. by tomorrow.
ES