

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO.27690 OF 2017

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri Gadi Praveen Kumar, learned counsel for the petitioners, Sri P.Rajesh Babu, learned counsel for the first respondent-Bank and Sri S.Sainathan, learned counsel for the second respondent-Bank and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is for a mandamus to declare the possession notice issued by the first respondent on 21.04.2017 as arbitrary, illegal and contrary to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity). A consequential direction is sought to the first respondent to permit the petitioners, atleast in principle, to alienate the open plot of an extent of 1694 square yards situated at Shayampet Village, Hunter Road, Hanamkonda, Warangal District, to enable the petitioners to settle the entire loan amount under one-time settlement within the time limit prescribed by the Court below.

Sri Gadi Praveen Kumar, learned counsel for the petitioners, would submit that the petitioners had obtained a loan from the first respondent on mortgage of two flats and two open plots; on one of the flats being released by the first respondent in their favour, the petitioners had mortgaged the released flat in favour of the second respondent-Bank. However the notice, issued under

Section 13(4) of the SARFAESI Act, erroneously mentions both the flats, including the flat already released by the first respondent in petitioners' favour and which was, thereafter, mortgaged by the petitioners with the second respondent.

It is wholly unnecessary for us to examine the rival contentions on merits, as Sri Gadi Praveen Kumar, learned counsel for the petitioners, would submit that the petitioners would discharge the entire debt due to the Bank within one (1) month from today; and it would suffice if the respondent-Bank is restrained from putting the mortgaged properties to sale for a period of six (6) weeks from today. Sri P.Rajesh Babu, learned counsel for the first respondent-Bank, readily agrees for such an order to be passed. Sri S.Sainathan, learned counsel for the second respondent-Bank, would request this Court to clarify that the respondent-Bank cannot proceed against the property mortgaged by the petitioners in favour of the second respondent.

We consider it appropriate, in such circumstances, to dispose of the Writ Petition recording the submission of Sri Gadi Praveen Kumar, learned counsel for the petitioners, that the petitioners would pay the entire dues to the first respondent-Bank within one (1) month from today. The first respondent shall not put the mortgaged properties to sale for a period of six (6) weeks from today. It is made clear that, in case the petitioners fail to abide by their undertaking to repay the entire debt within a period of one (1) month from today, it is open to the first respondent thereafter to proceed and put the properties, mortgaged in its favour, to sale in accordance with the provisions of the SARFAESI Act. Any action, which the respondent may take for recovery of its

dues from the petitioners, shall exclude the flat mortgaged by the petitioners in favour of the second respondent. The notice under Section 13(4) of the SARFAESI Act, to the extent it included the property mortgaged by the petitioners in favour of the second respondent, is set aside.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(D.V.S.S.SOMAYAJULU, J)

22nd October 2018
RRB

