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

<u>WRIT PETITION No.3674 of 2018</u>

<u>ORDER:</u> (Per 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 prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Certiorari, call for the records pertaining to Crl MP No.228/2017 on the file of Prl. Assistant Sessions Judge, Kadapa in connection with petition filed by the respondents bank under Section 14 of SARFAESI Act on 07.06.2017 along with vague affidavit without containing the anything under Sec 14 (1) (I to ix) as mandatory required, on which passing of the orders by the court below dated 11.10. 2017 mechanically i.e. beyond the prescribed period under the Act, on which seized the entire property covered under the Schedule in Crl MP No.228/2017 and also seized other movable vehicles even though not covered under the schedule through the advocate commissioner i.e. 4th respondent in violation of the law and procedure under Section 14 of SARFAESI Act and beyond the jurisdiction and power and limits, is illegal, arbitrary and against the statute including various rulings of the Apex Court as well as High Courts, consequently quash the order dated 11.10.2017 in Crl MP No.228/2018 passed by the Prl. Assistant Sessions Judge, Kadapa in the interest of justice and to pass such other order or orders that this Hon'ble Court may deem fit and proper in the interest of justice."

By order dated 14.02.2018, this Court took note of the fact that only the petition filed by the Bank of India under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') contained the requisite details but not the affidavit filed in support thereof. That apart, this Court observed that no affirmation was found in the affidavit. As the first proviso to Section 14 of the SARFAESI Act makes it clear that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized representative of the secured creditor declaring that the requirements, as set out in clauses (i) to (ix) thereunder, have been complied with and as the affidavit filed by the Bank of India, through its Authorized Officer, did not contain such declarations, this Court granted interim suspension of the impugned order and directed the bank to restore possession of the secured asset taken pursuant to the impugned order. Thereafter, it was reported to this Court on 14.03.2018 that the property was re-delivered to the petitioners.

Sri R.Siva Sai Swaroop, learned counsel for the petitioners, would place reliance on the order dated 14.02.2018 passed by this Court in W.P.No.40525 of 2017.

In the said case, in like circumstances as are obtaining presently, this Court, having found that the affidavit filed in support of the petition under Section 14 of the SARFAESI Act did not meet the requirements of the first proviso thereto on account of which the petition was rendered defective, set aside the order under challenge therein. In the instant case also, as the affidavit filed by the Bank of India patently suffers from the very same defect and the requisite details as per clauses (i) to (ix) of the first proviso to Section 14 of the SARFAESI Act find mention only in the petition and not in the affidavit, the order under challenge cannot be sustained.

The writ petition is accordingly allowed setting aside the order dated 11.10.2017 passed by the learned Principal Assistant Sessions Judge, Kadapa, in Crl.M.P.No.228 of 2017. This order shall however not preclude the Bank of India from initiating measures afresh in accordance with the due procedure laid down in Section 14 of the SARFAESI Act.

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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T.AMARNATH GOUD, J

Dt: 05.06.2018.
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