

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

WRIT PETITION NO.22538 of 2017

ORDER: (per SK,J)

The prayer of the petitioners in this case reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed 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 action of respondents in issuing symbolic possession notice dated 14.09.2016 and consequential proceedings vide D.Dis.No.D7/E-352884/2016 dated 13.11.2016 issued by the District Collector is illegal, irregular, arbitrary and violative of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and Rules framed thereunder and also offends Articles 14, 21 and 300A of Constitution of India and consequently direct the respondents not to take any cohesive steps including dispossession of the petitioner's property D.No.6-5-10/3, Jangu Saheb Street, Narsapur, West Godavari District, hold the petitioner's salary account without following due process of law and pass such other order or orders may deem fit and proper in the circumstances of the case.'

Ms.Shirley, learned counsel representing Mr.Mangena Sree Rama Rao, learned counsel for the petitioners, would submit that the respondent company failed to serve a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), and therefore, the further measures initiated by it under Section 13(4) thereof are illegal.

The respondent company filed a counter affidavit through its Chief Manager-cum-Authorised Officer at Hyderabad, wherein it is stated that as the envelopes addressed to the petitioners containing the demand notice

under Section 13(2) of the SARFAESI Act were neither delivered nor returned, the respondent company resorted to publication of the demand notice in Andhra Prabha Telugu newspaper and the New Indian Express English newspaper on 20.06.2016.

Mr.Kuncheam Maheswara Rao, learned counsel for the respondent company, would further state that the possession notice dated 14.09.2016 issued by the respondent company under Section 13(4) of the SARFAESI Act was returned with the endorsement 'unclaimed'. Thereupon, the respondent company took recourse to publication of the possession notice also in Prajasakti Telugu newspaper and Hans India English newspaper on 19.09.2016. Learned counsel would further inform this Court that the second petitioner submitted a representation to the respondent company on 18.02.2017, wherein he undertook to clear the entire outstanding dues by 31.03.2017, failing which, he stated that he and his family members had no objection to the respondent company taking actual physical possession of the secured asset after 01.04.2017.

Learned counsel would state that having given this undertaking, the petitioners failed to pay even a single paisa towards the outstanding dues.

In the light of the aforestated facts and circumstances, we find that the petitioners' complaint as regards the service of demand notice and possession notice under the provisions of the SARFAESI Act does not merit consideration as the respondent company took recourse to the alternate means of service in terms of Rule 3(3) of the Security Interest (Enforcement) Rules, 2002. The same would amount to deemed service of the notices. That apart, as the second petitioner offered an undertaking to

the respondent company which he failed to abide by, he cannot seek any relief from this Court in exercise of its discretionary jurisdiction.

The writ petition is therefore dismissed.

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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P.KESHAHA RAO,J

Date:12.02.2018

GJ

