

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO.6713 OF 2018

ORDER: (per SK,J)

The petitioners are husband and wife. They claim to be tenants in possession of the Flat bearing No.A-203 situated on the Second Floor of Block-A in Surbhi Sharadhi, admeasuring 1730 sft., in Ahuja Estates, House No.4-1-969/7, Abids, Hyderabad. This property was under mortgage with the consortium of Allahabad Bank and Bank of Baroda in relation to the loan facilities availed by Sarda Agro Oils Limited, Satamrai Village, Ranga Reddy District. Be it noted that the second petitioner is the sister of Jagadish Prasad Sarda, the fourth respondent herein, who is the Managing Director of Sarda Agro Oils Limited. Consequent upon the loan facilities availed by the said company being declared non-performing assets, recovery proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), culminating in an application being filed under Section 14 thereof before the learned Chief Metropolitan Magistrate, Nampally, Hyderabad, in CrI.M.P.No.5276 of 2017. By order dated 21.12.2017, the said application was allowed appointing an Advocate-Commissioner to take physical possession of various secured assets. The subject flat, which is in the occupation of the petitioners, finds mention in Schedule 'C' appended to the said order. Aggrieved by the said order, the petitioners filed the present writ petition.

During the course of arguments, Sri B.Chandrasen Reddy, learned counsel for the petitioners, submitted a proposal. Sri K.V.Simhadri, learned counsel representing Smt.K.Suchitra, learned counsel for the Allahabad Bank and the Bank of Baroda, was asked to ascertain as to whether the banks were willing to consider the same.

We are now informed that the Allahabad Bank, being the lead bank in the consortium, signified its assent to the said proposal *vide* e-mail dated 08.03.2018 addressed to Smt.K.Suchitra, learned counsel. Therein, the bank stated that it had perused the Undertaking Affidavit filed by the petitioners and it had no objection to accept the said undertaking subject to the condition that the petitioners would strictly adhere to the same and ensure that no further litigation takes place in the matter. In terms of the Undertaking Affidavit dated 07.03.2018 filed by the first petitioner speaking on behalf of himself and his wife, the second petitioner, he stated to the effect that they were willing to permit the banks to proceed further in the matter under the provisions of the SARFAESI Act and put the subject flat also to sale and expressed their willingness to participate in the said auction as and when it is held. They further stated that they would co-operate and allow physical verification of the flat during the bank working hours so as to enable prospective bidders to inspect the same. They categorically undertook that in the event they were successful bidders in the said auction, they would retain possession thereof by complying with the payment terms and in the event they were unsuccessful in the said auction, they would handover vacant physical possession of the flat within fifteen days from the date of the auction.

As the aforestated terms and conditions stipulated by the petitioners were accepted by the Allahabad Bank and the Bank of Baroda, the writ petition is disposed of without going into the validity of the order dated 21.12.2017 passed by the learned Chief Metropolitan Magistrate, Nampally, Hyderabad, in CrI.M.P.No.5276 of 2017 in so far as it pertains to the subject flat mentioned in Schedule 'C' appended thereto. However, the said order shall not be given effect to in so far as the said flat is concerned and the petitioners shall be permitted to retain the possession thereof. The banks are however at liberty to follow the due procedure laid down in the SARFAESI Act and put the subject flat to sale by way of public auction. The petitioners shall be permitted to participate in the said auction in accordance with the norms and in the event they emerge the successful bidders therein, they shall be permitted to retain the subject flat upon complying with the sale conditions. However, in the event they are unsuccessful in the said auction, they shall vacate and handover peaceful physical possession of the subject flat to the authorised officer, who undertakes the said public auction, within fifteen days from the date of the auction. It is also made clear that the petitioners shall co-operate in permitting the prospective auction bidders to visit and inspect the subject flat during bank working hours.

As the petitioners alone thought it fit to assail the order passed under Section 14 of the SARFAESI Act and given the fact that the second petitioner is a close relation of the Managing Director of Sarda Agro Oils Limited, the borrower, we deem it unnecessary to put the borrower or the other Directors and guarantors, who are impleaded herein as respondents, on notice or afford them an opportunity of

hearing. It is made clear that the petitioners shall strictly abide by the Undertaking Affidavit furnished by them and shall not seek either extension of time or any further indulgence from this Court.

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

SANJAY KUMAR,J

D.V.S.S.SOMAYAJULU,J

Date:08.03.2018

GJ

