

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

WRIT PETITION NO.3807 OF 2011

ORDER: (per SK,J)

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

'For the reasons stated in the accompanying affidavit, the petitioner herein pray that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly a writ in the nature of writ of Mandamus declaring the action of the 2nd respondent to take possession of the house bearing No.448-5/3, admeasuring 342 Sq.yards situated at Gunadala Vijayawada, Krishna District pursuant to the demand notice dated 23-06-2009 issuing under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as arbitrary, illegal and violative of principles of natural justice and consequentially direct the 2nd respondent to consider the request of the petitioner in payment of the installments by giving reasonable opportunity and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.'

By order dated 18.02.2011, this Court granted interim stay of all further proceedings, including taking over of possession of the house bearing No.44-8-5/3, Gunadala, Vijayawada, Krishna District.

I.A.No.1 of 2015 (W.V.M.P.No.1243 of 2015) was filed by the Industrial Development Bank of India Limited, the secured creditor, who is arrayed as the second respondent in the writ petition, to vacate the aforestated order.

Perusal of the writ affidavit demonstrates that the petitioner came before this Court only because of the fact that he was not in a position to avail the statutory remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') as there was no Presiding Officer at the Debts Recovery Tribunal, Visakhapatnam.

We are informed that such is not the case presently and the Tribunal at Visakhapatnam is functioning on regular basis. That being so, no cause is made out for adjudication of this writ petition on merits. However, as the petitioner had the benefit of the interim protection granted by this Court all through since the year 2011, we are of the opinion that the same should be continued for a limited period of time to enable him to avail the statutory remedy in accordance with law.

The writ petition is disposed of directing the Industrial Development Bank of India Limited, the second respondent, to forbear from taking any coercive measures in relation to the petitioner or the subject loan account for a period of two weeks from the date of receipt of a copy of this order. In the meanwhile, the petitioner shall avail the statutory remedy under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal at Visakhapatnam in accordance with law. Needless to state, the Tribunal shall take note of the period of pendency of this writ petition while determining limitation in the filing of such an application.

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:12.03.2018

GJ