THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No. 23899 OF 2011

ORDER:

The petitioner seeks a writ in the nature of *mandamus* declaring the action of the respondents-bank in seizing and selling mortgaged property *i.e.* shop bearing No. 32 situated in City Tower Complex, Nalgonda Cross Roads, Malakpet, Hyderabad, without giving notice and without following due process as contemplated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and consequently direct the respondents not to proceed with the property which was mortgaged by the petitioner with respondent No. 2-bank.

2. The case of the petitioner briefly is that the petitioner obtained education loan from respondent No. 2 to a tune of Rs.2,32,000/-for doing B.D.S. Course in 2001. The loan was sanctioned on the deposit of original title deeds in respect of property belonging to his father who stood as guarantor. The petitioner completed B.D.S. Course in 2005 and commenced to discharge the loan from 2006 onwards and from time to time, he paid amounts *i.e.* Rs.25,000/- in 2006; Rs.10,000/- in 2007; Rs.1,05,000/- in 2008; Rs.1,45,000/- in 2009; Rs.5,000/- in 2010 and Rs.1,30,000/- in 2011. Even then, respondent No. 2 on 27-07-2011 called the petitioner to pay the balance amount of Rs.3,90,000/- which was outstanding. On 27-07-2011, the office of respondent No. 2 agreed that if the petitioner paid

Rs.1,00,000/- out of Rs.3,90,000/-, he would be granted time of four months and on such assurance, the petitioner deposited Rs.1,00,000/- on instalments. After payment of Rs.1,00,000/-, the balance loan amount shown as due was Rs.2,90,000/- as on 20-08-2011. The petitioner was under *bona fide* impression that the balance amount due was Rs.2,90,000/-. However, surprisingly, respondent No. 2 once again came to the shop of the petitioner's father on 18-08-2011 and demanded and threatened to pay the balance amount of Rs.2,90,000/- on the very same day, otherwise he would seize the shop. On that, the petitioner requested that he would deposit Rs.50,000/- within two days and sought time for payment of the balance amount but the officer of respondent No. 2 did not heed to the request and started taking coercive measures under the Act without following due process. The officers of respondent No. 2 were threatening that they would put the property in auction. Hence, the Writ Petition.

3. The respondents filed counter opposing the Writ Petition. It is contended that the Writ Petition is misconceived and not maintainable as alternate and efficacious remedy is available under Section 17 of the Act. The case of the respondents is that the petitioner took a loan of Rs.2,32,000/- on 09-10-2001 and repayment of the loan was secured by mortgage of immovable property belonging to the father of the petitioner who stood as guarantor. The respondents denied the allegation that the petitioner made payments as detailed in his affidavit. Whatever payments were made were duly given credit to the loan account.

It is contended that the repayment of the loan was highly irregular. As a matter of fact, respondent No. 2 issued several reminders since 2007 and finally when the account became NPA and the petitioner did not regularize the payment schedule, respondent No. 2 issued demand notice under Section 13 (2) of the Act calling for the petitioner to pay the total outstanding of Rs.4,04,147/- together with interest. It was made clear in the notice that if the demand was not complied within the statutory period of 60 days from the date of receipt of notice, the bank would be constrained to take possession of the secured asset and sell the same for recovery of the loan amount as per the provisions of the Act. Since the petitioner neglected to pay the dues, respondent No. 2 filed Crl.M.P.No. 1885 of 2011 before the Chief Metropolitan Magistrate, Nampally, Hyderabad (for short, 'the Court below'), under Section 14 of the Act seeking relief of appointment of an advocate commissioner for taking possession of the secured asset and accordingly, the said petition was ordered and the bank went to the secured asset for taking possession through the advocate commissioner. It is contended that the petitioner was fully aware of the due steps that have been taken under the Act by the respondents but he suppressed the same. Thus, prayed to dismiss the Writ Petition.

4. Heard learned counsel for the petitioner and no representation for the respondents.

5. As can be seen from the contention of the respondents, respondent No. 2 issued notice under Section 13 (2) of the Act and proceeded as per the provisions of the Act and got

appointed an advocate commissioner as per the orders in Crl.M.P.No. 1885 of 2011 through the Court below. In that view, it is also the contention of the respondents that if the petitioner is aggrieved by the course taken by the respondents, the efficacious and alternate remedy is to proceed to Debts Recovery Tribunal and agitate before the said forum and not by way of Writ Petition. In this regard, a perusal of the judgment in *Authorized Officer, State Bank of Travancore and others Vs. Mathew K.C.*[1] would show that the Apex Court has deprecated the practice of entertaining Writ Petitions under Article 226 of the Constitution of India when recourse is available to petitioners under Sections 17 and 18 of the Act. In that view of the matter, I find force in the contention of learned counsel for the respondents. Hence, the present Writ Petition is devoid of merit. The petitioner is at liberty to approach Debts Recovery Tribunal for appropriate relief.

6. Accordingly, this Writ Petition is dismissed giving liberty to the petitioner to approach Debts Recovery Tribunal for appropriate relief within four weeks from the date of this order. Till then, the *interim* order dated 23-08-2011 passed by this Court in W.P.M.P.No. 29300 of 2011 shall be in force provided the petitioner had complied with the condition imposed in the said order. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

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06-09-2018. *U.DURGA PRASAD RAO, J.*

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[1] AIR 2018 SC 676