HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.18383 of 2017

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The action of the respondents in seeking to seize the petitioner's property of an extent of Ac.0.26 cents, including residential house thereon, in Sy.No.112-7 situated at Yeguvamachireddy Garipalle Village, Nimmanapalle Mandal, Chittoor District, without issuing notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), is questioned in this Writ Petition as being illegal and arbitrary. The petitioner's grievance, in this Writ Petition, is that, even without a notice being issued to them, under Section 13(2) of the SARFAESI Act, the respondents were seeking to forcibly dispossess her from the subject land and building.

Sri G.Kalyan Chakravarthy, learned Counsel for the respondents, would submit that the notice, under Section 13(2) of the Act, was sent to the petitioner's address by registered post acknowledgment due; the said notice ws returned unserved with the endorsement 'addressee left'; respondents had, thereafter, caused paper publication both in Andhra Prabha and Indian Express, Chittoor Edition; since no response was forthcoming, the respondents had approached the competent Magistrate under Section 14 of the SARFAESI Act; and the said Magistrate had entrusted the warrant, to an

Advocate Commissioner, for delivery of the subject property to the respondents.

The procedure, for service of a demand notice under Section 13(2) of the Act, is prescribed under Rule 3(1) of the Security Interest Enforcement Rules, 2002 (for short, "the Rules") and its proviso. Rule 3(1) stipulates that, service of demand notice, as referred to in sub-section (2) of Section 13 of the Act, shall be made by delivery (including hand delivery) or transmitted to the place where the borrower or his agent, empowered to accept the notice on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept service, or by Speed Post or by courier or by any other means of transmission i.e. by fax message or electronic mail service. In the present case, the respondents have complied with the requirement of Rule 3(1) by sending the notice through registered post acknowledgment due.

Under the proviso to Rule 3(1), where the authorised officer has reason to believe that the borrower or his agent is avoiding service of the notice, or that for any other reason the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain, and

also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

Proviso to Rule 3(1) imposes the condition that, where service of demand notice could not be effected by registered post acknowledgment due, the authorized officer is required, besides publishing the contents of the demand notice in two locally circulated newspapers (one in vernacular language), to also affix a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain. Both these conditions are cumulative, and not in the alternative.

While the respondents have, no doubt, caused publication of the contents of the demand notice in two leading newspapers in the locality, they have, admittedly, failed to affix copy of the demand notice on the outer door or any other conspicuous part of the house or building or where the borrower or agent ordinarily resides or carries on business. On the short ground that respondents had failed to affix the demand notice on the house of the borrower or agent, the subsequent proceedings, under Sections 13(4) and 14 of the SARFAESI Act, must be and are, accordingly, set aside.

As a copy of the demand notice, under Section 13(2) of the Act, has been filed before this Court, along with the counter affidavit, Sri P.Subhash, learned Counsel for the

petitioner, would fairly state that, instead of the respondents being called upon to again affix a copy of the notice on the building of the petitioner, it would suffice if the petitioner is given three weeks time to submit her objections to the demand notice issued under Section 13(2) of the SARFAESI Act, and the respondents are permitted to take action thereafter in accordance with law.

In the light of the submission of the learned counsel for the petitioner, the Writ Petition is disposed of permitting the petitioner to submit her reply, to the demand notice, to the respondents within three weeks from today. In case such a representation is filed within the aforesaid period, the respondents shall consider the objections raised therein, and take action thereafter in accordance with law. Suffice it to make it clear that, in case, no reply is submitted by the petitioner to the demand notice within the aforesaid period of three weeks, it is open to the respondents to take action thereafter, without awaiting receipt of the objections from the petitioner.

Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI,J

Date: 16.08.2018
Note:CC by 21.08.2018
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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