

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.22006 of 2018

ORDER: (*per Hon'ble Sri Justice Sanjay Kumar*)

The prayer of the petitioner 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 of Direction more particularly one in the nature of Writ of Mandamus declaring the acts of respondent Nos.1 and 2 in illegally taking over the possession of the House bearing No.26-360A of the petitioner. The order passed by Respondent No.3 dt 27.03.2018 in the absence of any affidavit, the acts of the authorized officer in categorizing the account as NPA and in not serving the purported notices under Sec 13(2) and 13(4) of the Act and the act of initiation of any action against all the persons concerned including policemen as illegal, arbitrary, contrary to SARFAESI Act and being in violation of fundamental right under Articles-19 and 21 and right to property under Article 300A of the Constitution of India and consequently, to direct the respondents to redeliver the possession of the first floor of the house bearing No.26-360A and further direct Respondent No.7 to pay the appropriate compensation and also direct respondent No.8 to initiate necessary action against all the persons concerned including policemen mentioned in the representation dated 13.6.2018 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Sri Srinivas Gangishetty, learned counsel for the petitioner, would contend that the procedure prescribed under Section-14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act') was not followed by the State Bank of India when it approached the Collector and District Magistrate, Kurnool, seeking to take over physical possession of the secured asset.

Sri P.Hari Prasad, learned counsel for the State Bank of India, having received instructions in the matter, would fairly concede that an affidavit was not filed by the Bank as provided in the statutory provision. He would further state that the Bank did not take actual physical possession of the secured asset pursuant to the impugned order dated 27.3.2018.

In that view of the matter, the order passed by the Collector and District Magistrate, Kurnool, on 27.3.2018 authorising the Tahsildar, Nandyal Mandal, to take over the physical possession of the secured asset cannot be sustained.

The Writ Petition is accordingly allowed setting aside the said order. This order shall however not preclude the Bank from initiating measures afresh in accordance with the due procedure laid down in Section-14 of the SARFAESI Act for taking over the physical possession of the secured asset.

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

JUSTICE SANJAY KUMAR

JUSTICE T.AMARNATH GOUD

05th July, 2018
DR