

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

WRIT PETITION No.22775 of 2018

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

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

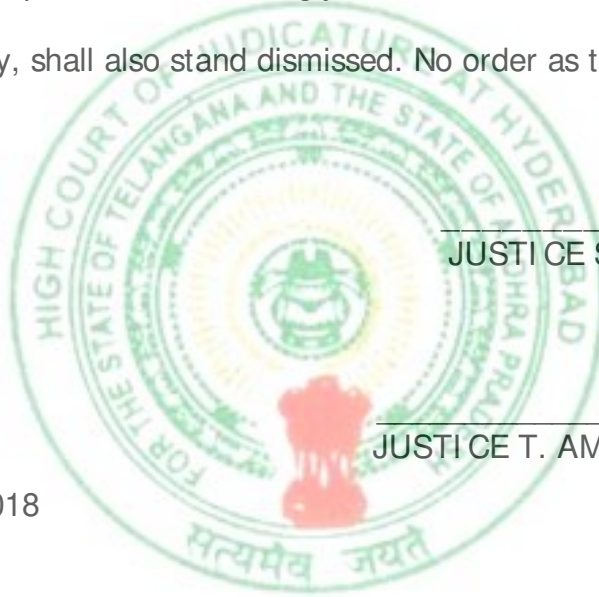
“For the reasons disclosed in the accompanying affidavit the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus by setting aside the two possession notices Dt: 16/4/2018 and 29/5/2018 without issuing notice under Section 13(4) of SARFA & ESI Act is to be declared as illegal, null and void and direct the respondent bank not to proceed further in respect of properties (i) All that piece and parcel of site bearing document No.168/1995 situated at Sy.No.150 and 151 measuring 1200 Sq. Yards out of 4800 Sq. yards situated at Boduppall Village and Gram Panchayat, Uppal Mandal, R.R. District (ii) All that the piece and parcel of site bearing document No.167/1995 situated at Sy.No.150 and 151 measuring 1200 Sq. yards out of 4800 Sq. yards situated at Boduppall Village and Gram Panchayat, Uppal Mandal, R.R. District (iii) All that the piece and parcel of site bearing document No.157/1995 situated at Sy.No.150 and 151 measuring 1200 Sq. yards out of 4800 Sq. yards situated at Boduppall Village and Gram Panchayat, Uppal Mandal, R.R. District and (iv) All that the piece and parcel of site bearing document No.156/1995 situated at Sy.No.150 and 151 measuring 1200 Sq. yards out of 4800 Sq. yards situated at Boduppall Village and Gram Panchayat, Uppal Mandal, R.R. District and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Sri B.N. Swamiji, learned counsel for the petitioner, would contend that the State Bank of India, the respondent herein, did not follow the due procedure laid down in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), inasmuch as possession notices were issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules of 2002'), without first issuing a notice under Section 13 (4) of the SARFAESI Act.

We find no merit in this contention as a possession notice is to be issued by the secured creditor under Section 13(4) of the SARFAESI Act

read with Rule 8(1) of the Rules of 2002. This aspect is clearly demonstrated by Appendix-IV to the Rules of 2002 which contains the prescribed format of the possession notice to be issued under Rule 8(1) of the Rules of 2002. This format clearly indicates that such a possession notice shall be issued in exercise of powers conferred under sub-section (4) of Section 13 of the SARFAESI Act read with Rule 8 of the Rules of 2002. The possession notices issued by the State Bank of India are in the very same format prescribed under Appendix-IV to the Rules of 2002. Therefore, the contention of the petitioner is devoid of merit.

The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



JUSTICE SANJAY KUMAR

JUSTICE T. AMARNATH GOUD

Date: 14.07.2018
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