THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.28522 of 2016

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 prays that the Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing the notice u/s 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 27.07.2016 for taking symbolic possession of the petitioner property bearing MCH No.10-3-108/1, Sy.No.2, Sainagar Colony, Lingojiguda, Saroornagar Mandal, R.R.District for the recovery of Rs.12,34,457.37 without accounting the amount already remitted by the petitioner as illegal, arbitrary violation of Article 14, 300-A of Constitution of India and consequently set aside the impugned notice dt.27.07.2016, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

By order dated 26.08.2016, this Court took note of the plea of the petitioner that he could not pay the demanded amount but already paid a sum of Rs.4,00,000/- as against the demand of Rs.12,34,457.37 ps. under the demand notice dated 14.12.2015 issued by the State Bank of India under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). This Court accordingly directed the bank and the Asset Reconstruction Company (India) Limited, Secunderabad, the second respondent herein, to which the bank had assigned the subject loan account, not to initiate further steps against the petitioner pursuant to the impugned possession notice dated 27.07.2016 subject to the petitioner paying a further sum of Rs.8,00,000/- within two weeks. Liberty was given to the respondents to proceed further in the event he failed to do so. This conditional order was complied with as the petitioner paid Rs.8,00,000/- on 10.09.2016 and the same was appropriated to his loan account.

The Chief Manager and Authorised Officer of the second respondent company filed a counter stating that after appropriation of the aforestated sum of Rs.8,00,000/-, the petitioner was still due and liable to pay a sum of Rs.1,94,405/-. Thereafter, it appears that a further sum of Rs.60,000/- was received from the bank by the second respondent company after reconciliation of the account and the same was also appropriated to the petitioner's loan account on 05.10.2016 resulting in a balance of Rs.1,35,478.73 paise as on 06.10.2016 along with interest and legal expenses.

Sri T.Kistaiah, learned counsel for the petitioner, would state that his client offered to pay a sum of Rs.50,000/- as against the aforestated dues but the second respondent was unwilling to receive the same .

Sri S.Sainathan, learned counsel for the second respondent company, would inform this Court that the bank has also reduced its demand and called upon the petitioner to pay a sum of Rs.1,00,000/- but he did not come forward despite ample time being given to him.

Sri T.Kistaiah, learned counsel, would seek to raise a dispute as to the rate of interest charged upon the loan outstandings. This aspect of the matter in our considered opinion would not fall for consideration in a writ petition. In the event the petitioner has any grievance in this regard, it was for him to avail the effective statutory remedy provided in the SARFAESI Act. Having failed to do so, the petitioner cannot seek to canvass this issue before this Court. As the amount still due and payable has now dwindled down to a meagre sum, it is for the petitioner to approach the second respondent and settle his dues amicably.

Leaving it open to the petitioner to do so, the writ petition is dismissed.

Interim order dated 26.08.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

____
SANJAY KUMAR,J

____
P.KESHAVA RAO,J

Date:06.02.2018

GJ