HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.2276 of 2008

ORDER:

The petitioner in this writ petition seeks an order in the nature of writ of Mandamus declaring the impugned notice dated 24.01.2007 issued under Section 13(2) of Chapter-III of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") by the respondent as illegal, arbitrary and consequently to set aside the said notice and direct the respondent to allow the petitioner to pay regular monthly instalments with new scheme.

2) The petitioner's case is that he works as an employee in Medical and Health Department and he took financial assistance from the respondent bank a sum of Rs.2,50,000/- in the year 2003 in four instalments for construction of a house in Guntakal by mortgaging his house situated at Sy.No.448 T.P.No.24-d/80 Plot No.50 within Guntakal Municipality. He has to pay Rs.2,200/- p.m as instalment and accordingly he paid Rs.42,800/- as part of the loan amount under various instalments. While-so, all of a sudden the respondent bank issued notice dated 24.01.2007 under Section 13(2) of SARFAESI Act demanding him to pay an amount of Rs.2,90,230/-, failing which, the bank will take possession of the property for sale. The petitioner's further case is that due to financial constraints he could not pay the instalments regularly and now he is ready to pay the Rs.40,000/- as part of the loan. Inspite of oral and written requests made by the petitioner, the respondent bank without following due process of law, embarks upon taking

possession of the house in which the petitioner is living along with his family. The petitioner has no abode to live in. Hence the writ petition.

3) Notice in the writ petition though served on the respondent, there is no representation. Hence heard learned counsel for petitioner.

4) As can be seen, the petitioner's submission is that he paid Rs.42,800/- as part of the loan amount under different instalments but without giving credit to those payments, the respondent authorities initiated proceedings under Section 13(2) of SARFAESI Act, which is illegal. The petitioner's submission before the Court is that he is now ready to pay Rs.40,000/- and the balance amount is concerned, he may be permitted to pay on instalments. As already stated supra, this Court has no advantage of the version of the respondent bank.

5) In that view of the matter, this Writ Petition is disposed of with a direction to the petitioner to make a representation to the respondent bank within two (2) weeks from today, in which case, the respondent bank shall dispose of his representation by passing a suitable order on merits within three (3) weeks from the date of receipt of said representation. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.08.2018
Note: Issue C.C by tomorrow.
(b/o)
scs