

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

Writ Petition No.29070 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

The relief sought for in this writ petition is for a mandamus to declare the action of the respondents, in highhandedly proceeding to auction the 1st petitioner's property of an extent of 387.2 square yards in Survey No.407 of Piduguralla Village and Gram Panchayat, Guntur District and nearby D.No.7-672/1 and 7-673, when admittedly the property mortgaged was only a residential house in Survey No.407 admeasuring 242 square yards, and in highhandedly seizing the same, as illegal and arbitrary.

It is the petitioners' case that both of them had approached the 1st respondent-bank for sanction of a housing loan in 2013, and had mortgaged their residential house admeasuring 242 square yards; they were sanctioned a loan of Rs.20.00 lakhs in 2013; the 1st petitioner's father stood as a guarantor for the loan; while the petitioners initially paid Rs.2,88,615/-, besides some other amounts, the 1st petitioner met with a serious accident in September, 2015 resulting in default in payment; a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was issued on 06.07.2017 calling upon the petitioners to pay Rs.27,10,467/- as on 05.07.2017 with interest failing which the bank would exercise their right under Section 13(4) of the SARFAESI Act; the 1st petitioner had gifted 145.2 square yards in Survey No.407 to his wife on 28.03.2013 vide document No.1672/2013; the gift deed was much prior to the loan being sanctioned by the 1st respondent; and, while the property mortgaged was of an extent of 242 square yards, the entire extent of 387.2 square yards,

including the extent of 145.2 square yards gifted by the 1st petitioner to his wife, is now being put to sale.

As noted hereinabove, a notice under Section 13(2) of the SARFAESI Act was issued on 06.07.2017 calling upon the petitioners to pay a sum in excess of Rs.27.10 lakhs. This was followed by a possession notice under Section 13(4) of the SARFAESI Act on 21.09.2017. While the total extent of the subject property is 387.2 square yards, it does appear that only an extent of 242 square yards was mortgaged by the petitioners in favour of the 1st respondent-bank. While the Section 13(2) notice refers to the entire extent of 387.2 square yards, Sri B.S.Prasad, learned Standing Counsel for the respondent-bank, would place before us a copy of the public notice, for e-auction for sale of the immovable properties, dated 08.09.2018 to submit that what is now being put to auction is not the entire extent of 387.2 square yards but merely an extent of 242 square yards.

The petitioners have the statutory remedy of approaching the Debt Recovery Tribunal questioning both the Section 13(4) notice, and the subsequent sale notice, whereby their mortgaged property was sought to be put to sale. While Ms.S.Nanda, learned counsel for the petitioners, would seek indulgence of this Court to repay the entire loan amount in convenient instalments, this Court, in proceedings under Article 226 of the Constitution of India, would not undertake the exercise of re-scheduling the debt due to the bank, for these are all matters for the bank to decide, and not for this Court to direct.

Suffice it therefore, while leaving it open to the petitioners to avail their statutory remedy under Section 17 of the SARFAESI Act, to also make it clear that dismissal of this writ petition would not disable the petitioners from approaching the bank, and requesting it to re-schedule repayment of their debt. As the petitioners have an effective alternative

statutory remedy of approaching the Debt Recovery Tribunal, under Section 17 of the SARFAESI Act, we see no reason to exercise discretion, in writ proceedings under Article 226 of the Constitution of India, to interfere.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

03rd October, 2018
JSU

(KONGARA VIJAYA LAKSHMI, J)



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Date: 03.10.2018

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