

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.12038 OF 2008

ORDER:

In this writ petition, the petitioner seeks a direction particularly in the nature of Writ of Mandamus to declare the action of the respondent bank in getting published the Possession Notice dated 08.05.2008 in New Indian Express under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) as illegal, arbitrary and consequently, to set aside the same and pass other orders.

2. Petitioner's case is that he purchased the Plot bearing Municipal No.22-88/14/18, (Plot Nos.15, part 16 and 17) in Survey Nos.45, 46 and 47 parts, admeasuring 667 Sq. Yards, situated at Chilkanagar, Uppal Kaln Village, Uppal Mandal, Ranga Reddy District, by availing loan of Rs.7,00,000/- from respondent bank on June, 2004 payable on a monthly installment @ Rs.7,000/- by mortgaging the aforesaid property as security. Petitioner's further case is that due to financial constraints and loss in the business, he could not make EMI payments regularly and he only paid Rs.85,000/- in lump sum. The petitioner has no intention to evade the bank loan. Thereafter, petitioner came to know on 08.05.2008 that the respondent has given paper publication in New Indian Express with a caption "Possession Notice" to the general public taking physical possession of the property. The respondent bank has

not issued any notice under Section 13(2) and 13(4) of the SARFAESI Act, but straightaway issued paper publication as stated above. The said notice is illegal.

Hence, the writ petition.

3. Heard learned counsel for petitioner. Though respondent appeared through counsel, no counter is filed so far.

4. A perusal of the copy of the notice issued by the respondent bank dated 03.05.2008 under the caption Possession Notice, filed by the petitioner along with material papers, shows that the respondent bank in exercise of its powers conferred under Section 13(2) of the SARFAESI Act issued demand notice calling upon the petitioner herein and another borrower to repay the amounts mentioned in the notice and since they failed to repay the amount, the public notice by way of paper publication was issued taking physical possession of the properties mortgaged by the borrowers to the bank in exercise of its power under Section 13 (4) and (12) of SARFAESI Act and Rules thereunder with the assistance of Advocate Commissioner appointed in CrI.M.P.Nos.51 and 53 of 2008 by Chief Metropolitan Magistrate, Cyberabad under Section 14(2) of the said Act on 03.05.2007. Thus, as can be seen from the public notice, the respondent bank pressed into service the provisions of SARFAESI Act for taking possession of the mortgaged property by getting appointment of Advocate

Commissioner through the Chief Metropolitan Magistrate, Cyberabad.

5. It is to be noted that in ***Authorized Officer, State Bank of Travancore and Others v. Mathew K.C.***¹, the Apex Court deprecated the practice of entertaining the writ petitions under Article 226 of the Constitution of India when the recourse is available to the concerned petitioners under Section 17 and 18 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In that view, the present writ petition is devoid of merits. The petitioner is at liberty to approach the Debt Recovery Tribunal for appropriate relief.

6. Accordingly, the writ petition is dismissed by giving liberty to the petitioner to approach the Debt Recovery Tribunal seeking necessary reliefs therein within four weeks from the date of this order. Till then, interim order passed by this Court in W.P.M.P.No.15527 of 2008 shall continue, subject to the petitioner complying with the condition imposed therein. No costs.

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

U.DURGA PRASAD RAO, J

Dt: 24.08.2018

Note: Issue C.C. by tomorrow.
B/o.SS

¹ MANU/SC/0054/18