

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.30241 OF 2018

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

The relief sought for in this Writ Petition is for a mandamus to declare the action of the respondent-Bank in demanding the entire loan amount of Rs.40,00,000/-, due for the entire period from 2016 to 2031 though only three monthly instalments of Rs.30,000/- each were due, and the action of the second respondent in securing a warrant from the Chief Metropolitan Magistrate, L.B.Nagar, Ranga Reddy District in CrI.M.P.No.449 of 2018 dated 09.08.2018 to evict the petitioner, as arbitrary and illegal. A consequential direction is sought to the respondent-Bank to allow the petitioner to repay the monthly instalments due, and the future amounts due in instalments, and to hand over Flat No.503, 5th Floor, Sai Lakshmi Aishwarya Classic Apartments, P.V.Enclave, Old Bowenpally, Balanagar Mandal, Ranga Reddy District to the petitioner on payment of due instalments.

Against the proceedings initiated against the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity) in CrI.M.P.No.831 of 2017, and the order passed by the Chief Metropolitan Magistrate therein on 25.10.2017, the petitioner filed S.A.No.1506 of 2017 before the Debts Recovery Tribunal at Hyderabad (DRT). The respondents herein filed their reply thereto on 15.03.2018, a copy of which is

also enclosed to the Writ Petition. It does appear from the reply affidavit, filed by the respondent-bank before the D.R.T, that the petitioner had availed a housing loan of Rs.40,00,000/-, after executing necessary documents on 28.11.2016, for purchasing Flat No.503; after she obtained a registered sale deed dated 30.11.2016, she created an equitable mortgage, by deposit of the sale deed in favour of the respondent-Bank agreeing to repay the loan in monthly instalments of Rs.30,000/- each together with interest. The petitioner is stated to have failed to repay the outstanding loan amount in instalments, resulting in the loan account being treated as a non-performing asset, and proceedings being initiated under the Revenue Recovery Act. A demand notice was issued, under Section 13(2) of the SARFAESI Act on 29.05.2017, calling upon the petitioner to repay the entire outstanding loan amount of Rs.40,99,913/-, together with interest and costs from 30.05.2017 onwards. Thereafter, a possession notice was issued under Section 13(4) of the SARFAESI Act on 01.08.2017 which was served on the petitioner, and was also published in the newspapers on 06.08.2017, apart from affixing it on the subject property. On the ground that the amount was not paid, even after service of notice, the respondent-Bank filed CrI.M.P.No.831 of 2017 under Section 14 of the SARFAESI Act and, pursuant to the warrant issued by the Chief Metropolitan Magistrate, the Advocate-Commissioner had issued a notice on 25.10.2017 questioning which the petitioner had invoked the jurisdiction of the DRT. The maintainability of the S.A. itself is put in issue by the Bank.

The petitioner having elected to approach the DRT, questioning the proceedings initiated by the Chief Metropolitan Magistrate in CrI.M.P. No.831 of 2017 dated 25.10.2017 cannot, simultaneously, invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

As noted hereinabove, the petitioner's account was declared a non-performing asset on her admitted default in repayment of three monthly instalments. The question whether the petitioner's account should be regularised, or the mortgaged property should be put to sale under the SARFAESI Act, or the petitioner should be permitted to repay the loan amount in easy monthly instalments, are all matters for the Bank to decide, and not for this Court to direct. In any event, since the petitioner has already approached the DRT in this regard, we see no reason to exercise discretion to entertain this Writ Petition under Article 226 of the Constitution of India. Suffice it to make it clear that the DRT shall examine the application filed by the petitioner, in S.A.No.1506 of 2017, on its merits uninfluenced by any observations made in this order.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

27th August 2018
RRB