

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

Writ Petition No.32960 of 2018

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

The petitioner herein invoked the jurisdiction of this Court seeking a writ of mandamus to declare the order passed by the Chief Metropolitan Magistrate, Cyberabad in CrI.M.P.No.488 of 2018 as arbitrary and illegal.

The subject property is said to belong to one Smt. Shameem Begum who acquired the same under a registered gift deed dated 15.01.2007. She is said to have entered into a development agreement with M/s. New Noble Builders and, after construction, she acquired absolute ownership of two flats. She expired on 03.11.2015 leaving behind her husband, four sons and five daughters. The 4th respondent, (one of the sons of the deceased Smt. Shameem Begum) is said to have, in collusion with the 3rd respondent, executed a fraudulent sale deed No.13829/2016 in his favour. The 3rd respondent is said to have obtained a housing loan from the 1st respondent mortgaging the said sale deed as security for the loan. The husband and the other children of Smt. Shameem Begum filed O.S.No.110 of 2018 before the Additional District Judge, Ranga Reddy District for cancellation of the said sale deed. On 29.01.2018, they executed a registered sale deed in favour of the petitioner vide document No.1420/2018. It is also stated that the 1st respondent had filed a criminal case against respondents 2 to 4, in FIR.No.1517 of 2017 dated 16.11.2017, which is said to be pending investigation. It is the petitioner's case that, suppressing these facts, a decree was obtained in O.A.No.3868 of 2017; and a recovery certificate was

issued on 11.04.2018. Thereafter, the 1st respondent is said to have initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) questioning which the petitioner filed S.A.No.225 of 2018 before the Debt Recovery Tribunal, Hyderabad.

Sri P.Suresh, learned counsel for the petitioner, would submit that the Second Appeal is listed for hearing on 01.11.2018 before the Debt Recovery Tribunal; and though an I.A was filed, seeking stay of all further proceedings, no orders have been passed therein.

Since the petitioner has already filed an application under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal, against the proceedings initiated under Section 13(4) of the SARFAESI Act, his remedy, to avoid possession of the subject building being taken pursuant to the orders of the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act, is to seek stay of all further proceedings, pursuant to the notice issued under Section 13(4) of the SARFAESI Act, in the proceedings pending before the Debt Recovery Tribunal.

The mere fact that hearing of the stay application, filed by the petitioner, has been deferred by the Debt Recovery Tribunal would not justify his invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, since the order of the Chief Metropolitan Magistrate, under Section 14 of the SARFAESI Act, is only as a consequence of the earlier notice issued under Section 13(4) of the SARFAESI Act.

While we see no reason to entertain this writ petition, suffice it to make it clear that the order now passed by us shall not disable the petitioner from seeking advancement of the I.A filed by him before the

Debt Recovery Tribunal, and for the Debt Recovery Tribunal to consider the said request in accordance with law.

Subject to the aforesaid observations, 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)

(KONGARA VIJAYA LAKSHMI, J)

14th September, 2018
JSU



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



Writ Petition No.32960 of 2018

Date: 14.09.2018

JSU