

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

Writ Petition No.33379 of 2018

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri M. Janardhan Rao, learned counsel for the petitioners and Sri Ch. Siva Reddy, learned Standing Counsel for the respondent-bank. With their consent, the Writ Petition is disposed of at the stage of admission.

Both the petitioners claim to be in occupation of the subject premises, which was mortgaged in favour of the respondent-bank by the borrower. Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), was issued on 09.04.2018; and, thereafter, a notice was issued under Section 13(4) of the SARFAESI Act read with Rule 8 of the Rules. The respondent-bank filed a petition, under Section 14 of the SARFAESI Act, before the Chief Metropolitan Magistrate at L.B. Nagar in CrI.M.P.No.494 of 2018; and on a warrant being issued, for taking physical possession and for its delivery to the authorized officer, in CrI.M.P.No.494 of 2018 dated 07.07.2018, the petitioners have invoked the jurisdiction of this Court.

The only contention urged by Sri M. Janardhan Rao, learned counsel for the petitioners, is that the petitioners are running an orphanage; and eviction by the respondent-bank would cause needless inconvenience to those residing in the home. Sri Ch. Siva Reddy, learned standing counsel for the respondent-bank, would, however, submit that, nowhere in the writ affidavit, has such a

plea been taken that an orphanage home is being run in the subject premises; and, if the petitioners are persons aggrieved, it is always open to them to avail the remedy under Section 17 of the SARFAESI Act.

We have gone through the contents of the writ affidavit and do not find any averment that the subject building is being used as an orphanage home. We also find no illegality in the action of the Chief Metropolitan Magistrate, Cyberabad in directing the Advocate-Commissioner to take physical possession and to execute the warrant. Since the petitioners have an effective statutory remedy of approaching the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, we see no reason to exercise discretion, under Article 226 of the Constitution of India, to interfere.

The Writ petition fails and is, accordingly, dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 04.10.2018
BSS