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

WRIT PETITION NO.36020 OF 2018

ORDER: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri Gangishetty Srinivas, learned counsel for the petitioner, and Sri M.Srikanth Reddy, learned Standing Counsel for the respondent – State Bank of India and, with their consent, the Writ Petition is being disposed of at the stage of admission.

The Application, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), was filed by the respondent – Bank in Crl.MP.No.95 of 2018 on 21.06.2018. This fact has not been disputed before us by Sri M. Srikanth Reddy, learned Standing Counsel for the respondent – State Bank of India. The Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, Kurnool passed an order, in Crl.M.P.No.95 of 2018 dated 02.08.2018, appointing an advocate Commissioner, and in directing him to take possession of secured asset. The order, in Crl.M.P.No.95 of 2018 dated 02.08.2018, was passed 43 days after an application was filed, under Section 14 of the SARFAESI Act, by the respondent – State Bank of India on 21.06.2018. The second proviso to Section 14(1) stipulates that, on receipt of the affidavit from the authorised officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall, after satisfying himself of the contents of the affidavit, pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application.

Under the third proviso to Section 14(1), if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period, but not exceeding in aggregate sixty days.

While the obligation placed on District Magistrate or the Chief Metropolitan Magistrate under the second proviso to Section 14(1) is to pass orders within 30 days from the date of application filed by the bank, the third proviso enables the Chief Metropolitan Magistrate or the District Magistrate to pass an order within a further period of thirty days (in all 60 days) after recording reasons in writing to show that his failure to pass an order, within 30 days, was for reasons beyond his control.

Since the thirty day period, stipulated under the second proviso to Section 14, expired on 21.07.2018, the Chief Judicial Magistrate-cum-Principal Sessions Judge, Kurnool could only have passed an order, thereafter, in terms of the third proviso to Section 14, after recording reasons in writing to show that his failure to pass an order within thirty days was for reasons beyond his control. In the present case, no such reasons are recorded in writing by the Chief Judicial Magistrate. It is evident, therefore, that the third proviso to Section 14(1) has not been complied with.

The impugned order is set aside and the matter is remanded to the Chief Judicial Magistrate to consider the application, in terms of third proviso to Section 14 of the

SARFAESI Act, and take action thereafter in accordance with law.

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

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date:10.10.2018
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