**HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**AND**

**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Petition No.35386 of 2018**

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

Heard Sri R.Siva Sai Swaroop, learned counsel for the petitioner, and Ms.V.Dyumani, learned Standing Counsel for the 2nd respondent-bank.

The proceedings under challenge before this Court is the order passed by the 2nd respondent-bank on 03.08.2018. A notice, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), was issued to the petitioner on 31.07.2018 in reply to which they submitted a letter on 03.08.2018 seeking revocation of the notice dated 31.07.2018, and to classify their account as a Non Performing Asset (NPA). In reply thereto, the 2nd respondent-bank, vide proceedings dated 04.08.2018, called upon the petitioner to submit financial information to enable them to consider renewing the limits and to come out of the NPA. The petitioner was informed that, unless the documents referred therein and the financial data was submitted, the respondent-bank would not be in a position to renew the limits; unless the limits were renewed, the petitioner's account would not come out of NPA; the demand notice, under Section 13(2) read with Section 13(3) of the SARFAESI Act dated 31.07.2018, stood good; and they should repay the entire dues immediately on or before the due date.

While reiterating the petitioner's submission that they would pay instalments in time, in case the account is renewed, Sri R.Siva Sai Swaroop, learned counsel for the petitioner, would contend that failure on the part of the 2nd respondent-bank, to give them a reasonable opportunity to do so, is illegal and arbitrary.

As observed by the 2nd respondent-bank, in its letter dated 04.08.2018, it is only if the petitioner's account were to be renewed, would it cease to be an NPA. The respondent-bank has sought certain information from the petitioner to consider their request for renewal of their limits. The question whether the petitioner's account should be renewed or not is a matter within the discretion of the bank. This Court, in proceedings under Article 226 of the Constitution of India, would neither undertake the exercise of re-scheduling the debt due from the borrowers to the bank or to permit re-payment of the debt in easy instalments. The order under challenge is an order under Section 13(3A) of the SARFAESI Act and, in terms of the proviso to Section 13(3A), the said order cannot be subjected to challenge even in proceedings before the Debt Recovery Tribunal. It is only after a notice under Section 13(4) of the SARFAESI Act is issued, would the remedy under Section 17 of the SARFAESI Act be available to the petitioner.

As it is not even the case of the petitioner that a notice under Section 13(4) of the SARFAESI Act has been issued till date, it is always open to them to furnish all those documents which the petitioner was called upon to submit to the 2nd respondent-bank in its letter dated 04.08.2018, and seek renewal of the loan.

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)**

01st October, 2018
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**HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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**HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**Writ Petition No.35386 of 2018**

**Date: 01.10.2018**

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