HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.37356 of 2018

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

The petitioner claims to have purchased a flat from the fourth respondent by way of a registered sale deed in the year 2014. He is aggrieved by a notice issued by the Tahsildar, Bhimavaram dated 25.09.2018 informing that the Authorised Officer, IDBI Bank was directed to approach the office of the Tahsildar to take possession of the mortgaged scheduled property by the Revenue Inspector, Bhimavaram who was already authorised to take possession of the mortgaged schedule property, and to hand over the same to the Bank authorities. By the said notice, the fourth respondent was directed to give possession of the mortgaged property immediately after receipt of the notice, failing which possession would be taken in accordance with the provisions of law to be handed over to the Bank authorities, besides initiating action for prosecution under Section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity).

While Smt. D.Naga Madhavi, learned counsel for the petitioner, would submit that the petitioner is a *bonafide* purchaser, the fact remains that, in terms of Section 13(13) of the SARFAESI Act, no borrower shall, after receipt of the notice referred to in Section 13(2) of the SARFAESI Act, transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor. If the petitioner had purchased the subject property after the notice was issued to the borrower under Section 13(2) of the SARFAESI Act, he cannot claim any right over the said property as against the Bank.

In any event, the petitioner would also fall within the definition of a "person aggrieved" under Section 17 of the SARFAESI Act and can, therefore, approach the Debts Recovery Tribunal under Section 17 thereof questioning the action of the respondents in seeking to dispossess him. Smt. D.Naga Madhavi, learned counsel for the petitioner, would submit that the Tahsildar has given him time only till today and the petitioner be protected for a period of two weeks to enable him to approach the Debts Recovery Tribunal. While we see no reason to grant the petitioner two weeks' time, suffice it to direct the respondents not to take coercive measures to evict the petitioner for a period of one (1) week from today.

Leaving it open to the petitioner to approach the Debts Recovery Tribunal, Visakhapatnam, and 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)

12th October, 2018
Note: Issue C.C today.
JSU

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.37356 of 2018

Date: 12.10.2018

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