IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.39274 of 2018

Between:

C. Venugopalaiah, S/o late Ananthaiah,
Partner of M/s. Chelimella Modern Rice
Mill, D.No.783-101, Lalitha Nagar, Nandyal,
Kurnool District and another

… Petitioner

Vs.

State Bank of India, SSME Branch, Nandyal,
Kurnool District, represented by Authorised
Officer

… Respondent

Counsel for the Petitioner : Mr. Gangisetty Srinivas

Counsel for Respondent : Mrs. Podila Hari Prasad,

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No.39274 of 2018

ORDER: *(per V. Ramasubramanaian, J)*

Challenging an order of the Chief Judicial Magistrate, Kurnool, passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and the subsequent action of the Authorized Officer taking possession of the secured assets, the borrower has come up with the above writ petition.

2. Heard Mr. Gangishetty Srinivas, learned counsel for the petitioner.

3. Mr. Podila Hari Prasad, learned counsel takes notice for the respondents.

4. The primary contention of the petitioner is two fold, namely (i) that in violation of the mandate of the amended Section 14 (1), the Chief Judicial Magistrate passes an order on the application under Section 14 of SARFAESI Act, 2002 beyond a period of 30 days and (ii) that after the expiry of the warrant issued to the Commissioner, the Commissioner took possession along with the Authorized Officer without any authority of law.

5. In support of the first contention, the judgment of another Bench of this Court in W.P.No.36020 of 2018 dated 10-10-2018 is relied. It is found from the said decision that there was a categorical

admission on the part of the bank that an application under Section 14 of the SARFAESI Act was filed on 21-06-2018 and that the Chief Judicial Magistrate passed an order on 02-08-2018, namely after 43 days. Therefore, a Bench of this Court held that the order passed by the Chief Metropolitan Magistrate was contrary to Section 14 (1) of the Act.

6. But in the case on hand, the date on which the bank filed the application before the Chief Judicial Magistrate is not known. The petitioner is actually relying upon the date on which the notice was signed and the date on which the petition was signed. There is always a time gap between the date on which a party to a litigation signs the papers and the date on which the papers were filed into court. Therefore, unless it is established clearly that the papers were actually filed on a particular date in court, the starting point under Section 14 (1) cannot be counted. It appears from the order of the Chief Judicial Magistrate-cum-Principal Assistant Sessions Judge, Kurnool, that the papers were filed on a day in March, 2018. It is the duty of the petitioner to establish the actual date on which the petition under Section 14 of the Act was filed into court and not the date on which it was signed by the bank. In the absence of such a date, we do not think that the proposition laid down in W.P.No.36020 of 2018 can be invoked. In cases of this nature, where the date of filing is not clearly established, the appropriate course of action open to the petitioner is to go to the Tribunal under Section 17 of the SARFAESI Act.

7. In so far as the second contention is concerned, the learned counsel for the petitioner relies upon the decision of a Division Bench of this Court in **Sri Balaji Centrifugal Castings, Hyderabad v. Authorised Officer, ICICI Bank Ltd., Hyderabad**[1]. That was a case where the Chief Judicial Magistrate passed an order appointing Advocate Commissioner to take possession. The warrant of the Advocate Commissioner expired on 26-05-2017. What ICICI Bank did in this case was that after the expiry of the period of warrant for the Commissioner, the Authorized Officer approached the police and took over possession. Therefore, this Court came to the conclusion in **Sri Balaji Centrifugal Castings, Hyderabad** that the bank is not entitled to take the law into its own hands and take possession. It is in that context that the court observed that there are only three methods stipulated in the SARFAESI Act, 2002 for the creditor to take possession and that the Authorised Officer going to the police to take possession after the expiry of the warrant for the Commissioner, was not authorised by law.

8. But in this case, the bank is not said to have gone to the police or to have taken the law into their own hands. Admittedly, it was the Commissioner, who took possession. Therefore, the question whether the warrant was extended or not, is a question of fact that the petitioner can usefully contest before the Debts Recovery Tribunal in an appeal under Section 17 of the SARFAESI Act.

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[1] 2018 (1) ALD 381

9. Therefore, with the above liberty to approach the Tribunal, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 01-11-2018

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