

* 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

* THE HON'BLE MS. JUSTICE J. UMA DEVI

+ W.P.NO.40992 of 2018

% Date: 15-11-2018

Between:

Moses Milk Products, rep. by its
Prop. Geddam Hemalatha
W/o. late John Moses, D.No.4-666,
Near Church Revenue Colony,
Kottapeta, East Godavari District.

.... Petitioner

And

1. State Bank of India, rep. by its Branch Manager, Kothapeta Branch,
Kothapeta, East Godavari District.
2. D. Raja Ratnam, Advocate Commissioner, State Bank of India,
Kothapeta, E.G. District.

... Respondents

! Counsel for the Petitioner : Ms. P. Hema Lalitha Kumar

^ Counsel for Respondents : Mr. B.S. Prasad

< GIST:

> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.40992 of 2018

ORDER: (Per VRS,J.)

The petitioner has come up with the above writ petition seeking a declaration that the action of the Advocate Commissioner appointed by the Chief Judicial Magistrate, Under Section 14 of the SARFAESI Act, 2002 to takeover physical possession of the secured asset, as illegal.

2. Heard Smt. P. Hema Lalitha Kumari, learned counsel for the petitioner. Mr. B.S. Prasad, learned Standing Counsel takes notice for the respondents.

3. At the outset, this writ petition is not maintainable, as it challenges a letter issued by the Advocate Commissioner appointed by the Chief Judicial Magistrate. The order passed by the Chief Judicial Magistrate under Section 14 of the SARFAESI Act, 2002 is not under challenge, on the specious plea that the petitioner was not a party and that she was not aware of the said order. An Advocate Commissioner appointed by the Chief Judicial Magistrate is required to carry out a ministerial task pursuant to the order passed by the Chief Judicial Magistrate. Therefore, the letter issued by the Advocate Commissioner is not amenable to challenge in a writ petition.

4. De hors the above, even on admitted facts, one of the secured assets was brought to sale by an auction notice issued in May, 2018. This shows that a demand notice ought to have been issued under Section 13(2) and possession notice ought to have been issued under Section 13(4). The petitioner has so far not gone to the Debts Recovery Tribunal against any of the measures taken by the Authorized Officer. The

petitioner has not gone to the Tribunal either challenging the possession notice under Section 13(4) or challenging the auction notice issued earlier. Therefore, seeking interference at the stage of taking possession does not arise. The appropriate remedy open to the petitioner, in such a case, is to go before the Tribunal. With the above observation the writ petition is dismissed.

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

JUSTICE V. RAMASUBRAMANIAN

15th November, 2018
Js.

JUSTICE J. UMA DEVI



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.40992 of 2018



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