

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

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

+ WRIT PETITION NoS. 41191 AND 41679 OF 2018

% Date:19.11.2018

Between:

WP No. 41191 of 2018:

M/s.M.S. Trading,
Plot No.153, Sy.No.172A, SVCIEL,
IDA, Bollaram, Hyderabad and another.

... Petitioners

v.

\$ Union of India, Ministry of Finance,
Rep. by its Secretary, Sastry Bhavan,
New Delhi and others.

.. Respondents

WP No. 41679 of 2018:

M/s.M.S. Trading,
Plot No.153, Sy.No.172A, SVCIEL,
IDA, Bollaram, Hyderabad and another.

... Petitioners

v.

\$ Union of India, Ministry of Finance,
Rep. by its Secretary, Sastry Bhavan,
New Delhi and others.

.. Respondents

! For Petitioner

: Mr. R. Siva Sai Swaroop

^ For Respondents

: Mrs.V. Dyumani.

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> Head Note

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? Cases Referred

: Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION NoS. 41191 AND 41679 OF 2018

COMMON ORDER: *(Per V. Ramasubramanian, J)*

The borrower has come up with the above writ petitions, challenging in the first writ petition, the docket order passed by the Chief Metropolitan Magistrate on 19.09.2018 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitization Act'), appointing an Advocate Commissioner and challenging in the second writ petition, the action of the Advocate Commissioner in taking possession after breaking open the lock and key of the secured asset.

2. Heard Mr.R. Siva Sai Swaroop, learned counsel for the petitioner. Smt. V. Dyumani, learned counsel takes notice for the respondents.

3. The main grievance of the writ petitioner is that the Bank filed an application in Criminal M.P. No.254 of 2018, under Section 14 of the Securitisation Act. On the said application, the Chief Metropolitan Magistrate passed an order dated 20.04.2018 appointing one Mr. M. Ramakrishna, Advocate, as Advocate Commissioner.

4. On the ground that the Advocate Commissioner did not execute the warrant, the Bank appears to have filed a miscellaneous application in Criminal M.P. No.254 of 2018 for extension of time to

execute the warrant. On the said application, the Court passed a fresh order, dated 19.09.2018, appointing another Advocate as Commissioner.

5. Challenging the order dated 19.09.2018, on the grounds (a) that a fresh application under Section 14 of the Securitisation Act ought to have been filed and (b) that even the prayer of the Bank was only for extension of the warrant, but not for appointment of a fresh Commissioner, the borrower came up with the first writ petition in WP No.41191 of 2018. Thereafter, the newly appointed Commissioner took possession of the property on 14.01.2018 forcing the borrower to come up with the second writ petition in WP No.41679 of 2018.

6. As pointed out earlier, the learned counsel for the petitioner raised two objections. The first is that when a Commissioner appointed by the Chief Metropolitan Magistrate could not execute the warrant, the Authorized Officer can only file a fresh application under Section 14 of the Securitisation Act and not seeking any other relief in the same application.

7. But, the said contention is liable for rejection. In all proceedings where commissioners are appointed, be it civil or criminal, the execution of the warrant is a ministerial act. The failure of the Commissioner to execute a warrant or the failure of the Commissioner to carry out a ministerial act does not result in the annulment of the order appointing the Advocate as the Commissioner. Therefore, any amount of fresh warrants can always be issued by the

Chief Metropolitan Magistrates as the source of power available to him under Section 14 of the Securitisation Act does not get exhausted with the Advocate Commissioner failing to execute warrant.

8. The second contention of the learned counsel for the petitioner is that even the prayer of the Bank was only for extension of warrant. Therefore, his contention is that the Court could not have appointed a new Commissioner.

9. But, the fresh application filed by the Bank shows that they made a prayer for appointing another Advocate Commissioner by extending the time for execution of the warrant. The prayer reads as follows:

“It is therefore prayed that this Hon’ble Court may be pleased to extend the time for a period of Three months to execute the Warrant of commission dt.20.04.2018 issued by the Hon’ble Court in the above CrI.M.P. No.254/2018 and pass such other order orders as may be deemed fit in the circumstances of the case.

It is therefore prayed that the Hon’ble Court may be pleased to appoint another Advocate Commissioner to execute the Warrant in the above CrI.M.P. No.254 of 2018 and pass such other order or orders as may be deemed fit in the circumstances of the case.

It is also prayed that the Hon’ble Court may be pleased to direct the Advocate Commissioner Sri M. Ramakrishna to refund the Commission fee of Rs.7,500/- in the interest of justice and pass such other order or orders as may be deemed fit in the circumstances of the case.”

Therefore, this contention is rejected.

10. The next contention of the learned counsel for the petitioner is that the impugned order dated 19.09.2018 is a non-speaking order. But, this contention is also liable to be rejected in

view of the fact that the original order dated 20.04.2018 is a speaking order. The order dated 19.09.2018 is only an order replacing the Advocate Commissioner appointed by the order dated 20.04.2018. Therefore, there are no merits in the writ petitions. Hence, they are dismissed.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 19, 2018

Note:

**Furnish CC by 20.11.2018.
B/o.
KTL**

