

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAHA RAO**

WRIT PETITION No.40525 OF 2017

O R D E R

(Per Justice Sanjay Kumar)

The prayer in this writ petition reads as under:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly in the nature of Writ of Certiorari to call for the records pertaining to the impugned proceedings in CrI MP No.731/2017 on the file of Chief Metropolitan Magistrate, Cyberabad at LB Nagar appointing an Advocate Commissioner i.e., 3rd respondent to take physical possession of the property covered in CrI MP No.731/2017 filed by the 2nd respondent bank in violation of law and procedure even after dismissal of earlier CrI MP No.335/2017 against the same subject matter, even after conducting of sale for the property covered in the CrI MP No.731/2017 it is totally illegal and in violation of law and procedure including various rulings of the High Courts and as well as Supreme Court and consequently to set aside the CrI MP No.731/2017 in the interest of justice and to pass such other order or orders that the Hon’ble Court may deem fit and proper in the interest of justice.”

By order dated 30.11.2017, this Court directed as follows:

“Perusal of the affidavit filed in support of CrI.M.P.No.731 of 2017 on the file of the learned Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, reflects that the requirements of the proviso to Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, have not been satisfied.

There shall accordingly be interim stay as prayed for.”

Smt.V.Dyumani, learned counsel for the Corporation Bank, the second respondent herein, would submit that the bank filed an application duly supported by an affidavit before the learned Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, which was taken on file as CrI.M.P.No.731 of 2017 and orders were passed thereon in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

However, perusal of the first proviso to Section 14 of the SARFAESI Act reflects that the application filed by the secured creditor under the said provision should be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor declaring that the requirements as stipulated under Clauses (i) to (ix) thereunder have been complied with.

Smt.V.Dyumani, learned counsel, would fairly state that the affidavit and the application filed by the Corporation Bank failed to satisfy even the first requirement under Clause (i), which states that the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing of the application needs to be mentioned in the affidavit.

We are of the opinion that some of the other Clauses also were not duly complied with. Be that as it may.

That apart, the order passed by the learned Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, in CrI.M.P.No.731 of 2017 is not placed on record and only the Commissioner's warrant is produced. The second proviso to Section 14 of the SARFAESI Act mandates that upon receipt of an affidavit, as detailed in the first proviso, the District Magistrate or

the Chief Metropolitan Magistrate, as the case may be, should satisfy himself/herself as to the contents of the affidavit before passing suitable orders thereon. This would mean that the Magistrate concerned must examine as to whether the contents of the affidavit fulfilled all the requirements, as set out in Clauses (i) to (ix) of the first proviso to Section 14 of the SARFAESI Act.

On the above analysis, the writ petition is allowed setting aside the order passed by the learned Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar, in Crl.M.P.No.731 of 2017. This order shall however not preclude the Corporation Bank from filing an application afresh, duly supported by a proper affidavit, invoking the power of the Magistrate concerned under Section 14 of the SARFAESI Act.

Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

P.KESHAHA RAO, J

14TH FEBRUARY, 2018
PGS