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

WRIT PETITION No.43846 of 2017

O R D E R
(per Justice Sanjay Kumar)

Challenge in this writ petition is to the order dated 18.11.2017 passed by the learned Chief Metropolitan Magistrate, Vijayawada, in Crl.M.P.No.3447 of 2017 in C.F.No.6565 of 2017. This order was passed 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').

The two main grounds of attack urged by Sri Palla Balu Anil Kumar, learned counsel for the petitioner, are that – 1) the affidavit filed in support of the petition by the State Bank of India does not comply with all the requirements stipulated in the proviso to Section 14 of the SARFAESI Act and 2) the direction of the learned Chief Metropolitan Magistrate, Vijayawada, to take the assistance of local elders is unknown to law and is therefore unsustainable.

Sri M.Srikanth Reddy, learned counsel for the State Bank of India, fairly concedes that the affidavit filed by the bank in support of its petition under Section 14 of the SARFAESI Act does not meet all the requirements as set out in the proviso to the said Section.

It is relevant to note that clause (vii) appended to the proviso to Section 14 of the SARFEASI Act requires affirmation by the secured creditor that the objection received in reply to the notice from the borrower was considered by it and that the reasons for non-acceptance of such objection had been communicated to the borrower. Admittedly, there was no such affirmation by the State Bank of India in the affidavit filed by it in support of the petition under Section 14 of the SARFAESI Act.

Perusal of the order under challenge reflects that the Chief Metropolitan Magistrate, Vijayawada, directed the advocate commissioner appointed by him to take the assistance of local elders so as to secure the possession of the secured asset. In this regard, reference may be made to Section 14(2) of the SARFAESI Act which empowers the Chief Metropolitan Magistrate concerned to take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. Needless to state this power would have to be exercised legitimately by use of lawful means. In furtherance thereof, it would be open to the Chief Metropolitan Magistrate concerned to direct the advocate commissioner to take the assistance of law enforcement agencies, such as the police, but assistance of local elders cannot be brought within the ambit of forceful means recognised by law for securing compliance. The direction of the Chief Metropolitan Magistrate, Vijayawada, to the effect that the advocate commissioner should take the assistance of local elders is therefore unsustainable in law.

On both the aforestated grounds, the order under challenge is liable to be set aside and is accordingly set aside. The State Bank of India is at liberty to file a proper application under Section 14 of the SARFAESI Act and in the event it does so, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall consider the same in accordance with law.

The writ petition is allowed.

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

SANJAY KUMAR, J

P.KESAVA RAO, J

7TH FEBRUARY, 2018

PGS