**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**
**AND**
**THE HON'BLE SRI JUSTICE K.LAKSHMAN**

**WP.No.8403 of 2018**

**ORDER:** *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

*1.* This Writ Petition has been filed assailing Notice dt.22.09.2017 issued under Section 13(4) of the SARFAESI Act, 2002 (for short 'the Act') by the 1st respondent-Financial Institution on the petitioners.

*2.* One Nagubandi Ravi is the father of petitioner 1 to 3 and the husband of the 4th respondent. He died on 18.08.2015. The deceased was the owner and possessor of a commercial building bearing door No.10-5, consisting of RCC ground, first and second floors in 254 sq.yards situated in Kodad Municipality and Mandal, Suryapet District.

*3.* The 2nd respondent had borrowed a loan from the 1st respondent claiming that the deceased was one of the guarantors to the said loan and that he had created an equitable mortgage in respect of the said property in favour of the 1st respondent.

*4.* Petitioners contend that by misrepresenting the facts, the 1st respondent-Financial Institution approached the District Magistrate, Suryapet under Section 14 of the Act and obtained an order dt.10.01.2018 permitting the 1st respondent to take possession of the subject property. They contend that it was incumbent upon the 1st respondent-Institution to serve notice on the petitioners under Section 13(4) of the Act before they seek physical possession of the property and such notice has not been served on them, and that if they are dispossessed from the property grave and irreparable loss would be caused to them since the property is in possession of the tenants and the tenants would be disabled from undertaking their business.

5. In the counter affidavit filed by the 1st respondent it is stated that fresh demand notice dt.21.6.2017 was also issued to the petitioners under Section 13(2) of the Act and that the said notice was sent by RPAD on 22.06.2017, but petitioners evaded to receive it. It is further contended that the Authorized Officer of the 1st respondent therefore published the demand notice in Andhra Prabha Telugu and Business Standard English Daily Newspapers on 30.06.2017 after duly complying with the provisions of Rule 3 of Security Interest (Enforcement) Rules.

6. However, the 1st respondent has not filed any proof of affixture of the said notice on the outer door of the subject premises as is mandated by *proviso* to sub-rule(1) of Rule 3 and there is also no pleading that it had so affixed it, and it is merely stated that publication is made in two leading newspapers.

7. A Division Bench of this Court in ***Neelam v. State Bank of India, Commercial Branch, Secunderabad***[1] held that when the proceedings are initiated against a person, who died, they would automatically stand abated and the Bank would have to issue fresh notice to legal heirs. It quoted a decision rendered in

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[1] 2015(1) ALD 443

***S.Suhaina Banu and others v. Indian Bank, Arm Branch and Others*[2]** which stated as under:

> "*Point No.(i):* Whether the notice under sub-section (2) of Section 13 should be issued to the legal heirs of the deceased borrower/guarantor afresh in the event such borrower/guarantor dies after the service of notice under sub-section (2) of Section 13 of the SARFAESI Act. The object of the provisions of sub-section (2) of Section 13 is mainly requiring the borrower/guarantor by notice in writing to discharge in full his liabilities t the secured creditor, within sixty days from the date of notice, failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13 of the SARFAESI Act. In that sense, the proceedings initiated against a person while he was alive would automatically stand abated immediately after his/her demise. The only course open to the respondent-Bank is to initiate proceedings by issuance of fresh notice to the legal heirs of the borrower/guarantor, as the case may be, as the legal heirs of the borrower/guarantor will have an opportunity to discharge the liabilities in sixty days. Only in the event of failure to discharge the liabilities in full by the legal heirs, the respondent-Bank could proceed further by issuance of notice under sub-section (4) of Section 13 and duly served or affixed in terms of that provision read with Rue 8 of the Security Interest (Enforcement) Rules. The first point is answered accordingly."

8. Having regard to the above legal position, we are of the opinion that, in the absence of satisfactory proof of service of notice under Section 13(2) of the Act on the petitioners, the order dt.10.01.2018 of the District Magistrate, Suryapet cannot be held to be valid and deserves to be set aside.

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[2] WP.No.27230 of 2009

9. Accordingly, the Writ Petition is allowed. The measures initiated by the 1st respondent vide RC.No.184/2017/562, dt.22.09.2017 under Section 13(4) of the Act against the subject property as well as the order dt.10.01.2018 of the District Magistrate, Suryapet are both set aside. The 1st respondent is directed to serve notice on the counsel for petitioners-Sri Md.Moinuddin, H.No.16-11-20/6/2/1A, Opp. Ganesh Temple, Saleem Nagar, Malakpet, Hyderabad-500036, or on the petitioners and then proceed to take action for recovery of the amounts due to it. No order as to costs.

10. Consequently, miscellaneous petitions pending if any shall stand dismissed.

**M.S. RAMACHANDRA RAO, J**

**K.LAKSHMAN, J**

27th November, 2019.

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