THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.12715 OF 2019

O R D E R
(*Per Hon'ble Sri Justice Sanjay Kumar*)

Challenge in this writ petition is to the order dated 16.11.2018 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.6390 of 2018, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'). The said order was revalidated on 26.04.2019 whereby the Advocate Commissioner was given time up to 05.07.2019 to take possession of the secured assets and deliver the same to the Union Bank of India, the secured creditor.

The writ prayer mentions the details of the secured assets, viz., residential house bearing Door No.8-2-293/82/PN/97, Plot No.97, admeasuring 502 sq. yards in Sy.No.403, T.S.No.1, Ward No.9, Block F of Shaikpet Village and Mandal, Hyderabad District, Road No.9, Prashasan Nagar, Jubilee Hills, Hyderabad; and Flat Nos.405 and 406, Fourth Floor, Door No.7-1-58, Ameerpet, Hyderabad. The prayer of the petitioners is that till the adjudication of their suit in O.S.No.726 of 2018 pending on the file of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, they should not be dispossessed.

Sri Vedula Venkataramana, learned senior counsel appearing for M/s. Bharadwaj Associates, learned counsel for the petitioners, would inform this Court that the prayer in so far as Flat Nos.405 and 406, Fourth Floor, Door No.7-1-58, Ameerpet, Hyderabad, is not being pressed.

The writ petition is dismissed in so far as these items of property are concerned.

As regards the challenge to the order dated 16.11.2018 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in exercise of power under Section 14 of the SARFAESI Act, though various issues are raised by both sides, we are not inclined to consider them on merits. We are of the opinion that the writ petition is amenable to disposal on a short ground.

Be it noted that the mortgage in relation to the house property at Door No.8-2-293/82/PN/97, Plot No.97, admeasuring 502 square yards in Sy.No.403, T.S.No.1, Ward No.9, Block F of Shaikpet Village and Mandal, Hyderabad District, Road No.9, Prashasan Nagar, Jubilee Hills, Hyderabad, was created under registered Memorandum of deposit of title deeds, bearing Document No.5041 of 2010, dated 21.12.2010. The details of the property in terms of this mortgage deed at item No.3 of the First Schedule read as follows:

> 'All that House No.8-2-293/82/PN/97 on Plot No.97, admeasuring 502 square yards Road No.9, in survey No.403, T.S.No.1 Ward No.9, Block No. F of Shaikpet Village, Golconda Mandal, Hyderabad, District, within the Municipal Corporation of Hyderabad and bounded by: …………………………'

However, the application filed by the Union Bank of India before the learned Chief Metropolitan Magistrate, Hyderabad, indicated the details of the secured asset as follows:

> 'The Plot No. 97, Road No. 9 situated in Survey No. 403 (TS No. 1, ward No. 9 Block – F of Shaikpet Village, Golconda Mandal, Hyderabad District within the limits of Municipal Corporation of Hyderabad, Area 502 square yards owned by Mr. Debabrata Kantha and bounded:'

Section 2(1)(zc) of the SARFAESI Act defines 'secured asset' to mean the property on which security interest is created. In turn, Section 14 provides that where the possession of any secured asset is required to be taken by the secured creditor, such secured creditor may request, in writing, the Chief Metropolitan Magistrate, within whose jurisdiction such secured asset is situated, to take possession thereof.

Therefore, the details of the secured asset in question need to be correctly mentioned in the application made under Section 14 of the SARFAESI Act.

However, in the case on hand, we find that the Union Bank of India failed to furnish the correct details of the secured asset in terms of the mortgage deed. When the mortgage deed specifically spoke of the house property which was mortgaged with reference to the house number, mere mentioning of the plot number alone without indicating that there is a house situated thereon would not meet the requirement of law. It is incumbent upon the secured creditor to give proper details of the secured asset, possession of which is sought to be taken, while making an application under Section 14 of the SARFAESI Act. As the Union Bank of India failed to do so in the case on hand and the order passed on this application would be practically unworkable inasmuch as the house property is not even mentioned therein, the order dated 16.11.2018 passed in Crl.M.P.No.6390 of 2018 on the file of the learned Chief Metropolitan Magistrate, Hyderabad, is set aside. This order shall however not preclude the Union Bank of India from taking recourse to Section 14 of the SARFAESI Act by way of an application afresh in accordance with the due procedure.

The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

17th JULY, 2019

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