

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

**Writ Petition No.14867 of 2019**

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

Heard counsel for the petitioner and Sri M.Srikanth Reddy, Counsel appearing for respondent.

2. Petitioner in this Writ Petition assails the order dt.21.06.2019 in SA.No.44 of 2018 of the Debt Recovery Tribunal-1, Hyderabad which refused to set aside the order dt.11.11.2018 passed by the Chief Judicial Magistrate, Khammam in CrI.MP.No.32 of 2017 for eviction of the petitioner from the subject property.

3. It is the contention of the counsel for the petitioner that the Demand Notice dt.05.06.2017 issued under Section 13(2) of the SARFAESI Act, 2002 (for short 'the Act') was served in person on the petitioner on 06.06.2017 and Possession Notice dt.05.08.2017 was issued under Rules 8(1) and (2) of the Rules before the expiry of 60 day period fixed in the Demand Notice dt.05.06.2017 issued under Section 13(2) of the Act.

4. In the counter affidavit filed by the respondent, firstly, a plea of existence of alternative remedy before the Debt Recovery Appellate Tribunal under Section 18 of the Act has been raised.

5. Admittedly, the Debt Recovery Appellate Tribunal for the State of Telangana is located in Calcutta, and it is not disputed that there is no Chairperson appointed for the said Appellate Tribunal as of date, that appeals are required to be filed in Calcutta and the appellants have to then proceed to the Debt Recovery Appellate Tribunal at Allahabad, which is the in-charge Appellate Tribunal, to get interim orders.

6. Therefore, it cannot be said that the remedy of Appeal under the Act is an adequate and affective alternate remedy.

7. There is no answer in the counter affidavit to the plea of the petitioner that Possession Notice dt.05.08.2017 is issued within the period of 60 days from the date of service of Demand Notice dt.05.06.2017.

8. Therefore, the contention of the counsel for petitioner has to be accepted i.e., Possession Notice was issued within the period of 60 days i.e., on the 60<sup>th</sup> day by the respondent, which the respondent is not entitled to do under Section 13(2) of the Act.

9. So, the very taking of possession of the secured property from the petitioner by invoking Section 14 of the Act vide order dt.11.11.2018 in CrI.MP.No.32 of 2017 cannot be sustained.

10. Accordingly, the Writ Petition is allowed; the Possession Notice dt.05.08.2017 issued by the respondent, the order

dt.11.11.2018 in CrI.MP.No.32 of 2017 of the Chief Judicial Magistrate, Khammam, as also the order dt.21.06.2019 in SA.No.44 of 2018 of the Debt Recovery Tribunal-1, Hyderabad are set aside. Consequently, the petitioner shall be restored back possession of the secured property by the respondent forthwith; and the petitioner is given liberty to avail the remedy under Section 19 of the Act to recover the compensation from the respondent for illegal dispossession contrary to the provisions of the Act by the respondent. It is also noted by this Court that the Expenses Account indicating the expenses incurred by the respondent in connection with the loan amount of the petitioner appears to be grossly exaggerated and beyond reasonable norms and the respondent-Bank is also restrained from recovering the expenses incurred for taking possession of the subject property from the petitioner. No order as to costs.

11. Consequently, miscellaneous petitions pending if any shall stand closed.

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

**K.LAKSHMAN, J**

24<sup>th</sup> October, 2019.

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