THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

<u>Writ Petition No.18734 of 2019</u>

<u>ORDER</u> : (per Hon'ble M.S. Ramachandra Rao)

Heard the counsel for petitioner, and Sri P. Hari Prasad, counsel for respondents.

2. This Writ Petition is filed assailing the order dt.15.07.2019 on the file of Chief Judicial Magistrate, at Cyberabad passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 **(for short, the 'SARFAESI Act')** holding that the 1st respondent-Bank is entitled to recover possession of the subject property from petitioner who is the owner and possessor thereof.

3. It is not in dispute that the subject property was given as security for a loan granted by 1st respondent-Bank to the 3rd respondent and others, and the outstanding loan amount as on 20.09.2018 was Rs.2,12,28,867/-.

4. However, by the date the application Criminal M.P.No.509 of 2019 was filed before the Chief Judicial Magistrate, at Cyberabad on 29.04.2019, the actual amount due was far less, i.e., Rs.1,44,72,298/-. But, this fact was not mentioned in the affidavit filed before the Chief Judicial Magistrate, at Cyberabad.

5. Under proviso to sub-Section (1) of Section 14, the affidavit filed by the 1st respondent before the Magistrate is required to mention total claim of the Bank as on the date of filing of the application. It is thus clear that the total claim of the Bank as on the date of filing of the application was incorrectly mentioned in the affidavit filed in support of Criminal M.P.No.509 of 2019.

6. The Chief Judicial Magistrate, at Cyberabad also did not verify this fact and simply accepted what was stated in the affidavit filed by 1st respondent and passed the impugned order.

7. Though, in the counter-affidavit filed by the 4th respondent, it is stated that there is substantial compliance with the proviso to Section 14, we are not inclined to agree with the same.

8. It was the duty of 1st respondent-Bank as a secured creditor and as a financial institution to place correct facts truthfully in the affidavit filed by its representative before the Chief Judicial Magistrate, at Cyberabad. It cannot suppress the facts and say that even if it did not mention the correct facts the order of the Magistrate cannot be interfered with.

9. Therefore, the Writ Petition is allowed. The impugned order is set aside and the 1st respondent-Bank is directed to restore possession of the subject property to petitioner, if possession was already taken.

10. Liberty is given to 1st respondent to file a fresh application before the Chief Judicial Magistrate, at Cyberabad by correctly stating the facts, and if such an application is filed the said Magistrate shall pass appropriate orders after satisfying himself as to the correctness of the facts stated and then pass appropriate orders in accordance with law.

11. Accordingly, the Writ Petition is allowed as above. No order as to costs.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 28.10.2019

Note : Issue C.C. in one (01) week.
B/o.

Ndr/*