THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN

<u>WRIT PETITION NO.21994 OF 2019</u>

<u>ORDER</u>: (per SK,J)

The petitioners are aggrieved by the order dated 14.08.2019 in Crl.M.P.No.582 of 2019 on the file of the learned Chief Metropolitan Magistrate, Cyberabad, secured by the State Bank of India, the respondent herein, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). They apprehend that the bank would take over physical possession of the secured asset, *viz.*, Plot No.11/4/part, in Survey No.50 and 55/part, IDA Nacharam, Uppal Mandal, Ranga Reddy District.

2. Having heard Sri V.Murali Manohar, learned counsel for the petitioners, and Sri M.Srikanth Reddy, learned counsel for the respondent bank, we are of the opinion that the petitioners should approach the jurisdictional Debts Recovery Tribunal in the first instance. We may note that earlier, the first petitioner had done so in relation to the possession notice issued by the bank. Upon dismissal of the securitisation application filed by it, the first petitioner chose to file W.P.No.11280 of 2019 before this Court. However, by order dated 11.06.2019, this Court dismissed the writ petition directing the first petitioner to avail the alternative remedy of appeal provided to it under the statute. We are informed that an appeal has been filed and is pending consideration before the Debts Recovery Appellate Tribunal, Kolkata.

3. Though various disputed questions of fact would arise in the context of the pleadings in this writ petition, which cannot be examined or

resolved by this Court in exercise of jurisdiction under Article 226 of the Constitution and it would be appropriate for the petitioners to invoke the alternative remedy provided to them under Section 17 of the SARFAESI Act before the jurisdictional Debts Recovery Tribunal, we are of the opinion that some interim protection requires to be provided to the petitioners while relegating them to such alternative remedy.

4. We may note that the material placed on record bears out that the petitioners already secured an arbitral award for a sizable amount of money which would be adequate to cover the dues of the respondent bank. That apart, there appears to be a bank guarantee furnished to the petitioners by the oversees branch of the respondent bank which has not yet been honoured despite invocation.

5. Though these aspects are disputed by Sri M.Srikanth Reddy, learned counsel, *prima facie*, we find that the petitioners do have a substantial point to raise in this regard. Further, the warrant issued pursuant to the impugned order dated 14.08.2019 is alive till 02.12.2019 and therefore, no harm would be caused to the bank by the order that we propose to pass.

6. Sri V.Murali Manohar, learned counsel, would state that, if given protection for four weeks, the petitioners would strive to either realise the amounts due to them under the arbitral award referred to supra or settle the matter with the respondent bank by coming to some sort of amicable agreement.

7. Accepting this proposal, we direct *status quo* to be maintained, in relation to and pursuant to the impugned order dated 14.08.2019 passed by the learned Chief Metropolitan Magistrate, Cyberabad, in Crl.M.P.No.582 of 2019 and the warrant issued pursuant thereto, up to

31.10.2019. In the meanwhile, it shall be open to the petitioners to either settle the matter with the respondent bank or invoke the statutory alternative remedy available to them and seek interim protection. Needless to state, in the event the petitioners take recourse to the latter course, the jurisdictional Debts Recovery Tribunal shall consider their pleas on their own merits in the context of the interim protection sought pending disposal of the securitisation application.

7. The writ petition is disposed of with the above directions. Pending miscellaneous petitions, if any, 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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K.LAKSHMAN,J

Date:01.10.2019

Note:
Furnish C.C. today.
(B/o)
GJ