THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.15501 of 2019

O R D E R : (per the Honourable Sri Justice M.S.Ramachandra Rao)

1. This writ petition is filed challenging the action of the 1st respondent-Bank in executing a warrant dt.27.04.2019 issued by the Chief Metropolitan Magistrate, Cyberabad at L.B.Nagar in Crl.MP.No.320 of 2019 as arbitrary, illegal and contrary to the provisions of the Act and also contrary to the order dt.24.04.2019 passed in IA.No.1995/2019 in SA.No.155/2019 by the Debt Recovery Tribunal-II at Hyderabad.

2. The subject matter of this writ petition is Plot No.9, admeasuring 1083 Sq.Yards in Survey No.47/2 bearing House No.8-13-8/11/A consisting of commercial shop and major open land located at Kattedan Village, Rajendranagar Revenue Mandal, Ranga Reddy District in the name of petitioners 2 and 3.

3. The 3rd respondent is a partnership firm and for the amounts borrowed by the said firm from the 1st respondent the above said property as well as the other properties were given as security by the petitioners 2 and 3.

4. Thereafter, 3rd respondent did not repay the loan.

5. The 1st respondent-Bank initiated proceedings under SARFAESI Act, 2002 (for short 'the Act') and issued a notice dt.20.03.2019 published

in New Indian Express Daily Newspaper on 21.03.2019 proposing to sell the above property fixing the date of auction as 26.04.2019.

6. The petitioners filed SA.No.155/2019 before the Debt Recovery Tribunal-II at Hyderabad on 21.04.2019.

7. On 24.04.2019 in IA.No.1995 of 2019 filed in the said SA, the Tribunal granted conditional stay directing the petitioner to deposit 30% of the outstanding dues mentioned in the sale notice dt.20.03.2019 in two installments.

8. However, the petitioners deposited the first installment of Rs.33.25 lakhs on 25.04.2019 but the deposit of second installment 15% could not be complied with.

9. Thereafter the 1st respondent-Bank issued another auction notice dt.22.05.2019 fixing the E-auction date as 13.06.2019.

10. Petitioners contend that publication was also made in Newspaper on 23.05.2019 fixing a lesser price than what was indicated in the earlier Notice dt.20.03.2019; they, therefore filed WP.No.11269/2019 before this Court; on 13.06.2019 this Court passed an order granting more time to the petitioners to pay the second installment as directed by the Debt Recovery Tribunal in its order dt.24.04.2019 by extending time to 27.06.2019.

11. Petitioners contend that they paid Rs.28,50,000/- on 27.06.2019 and another sum of Rs.4,50,000/- on 29.06.2019. But, there was a small short

fall in making payment and that short fall was also made good later. It is stated that, however, the auction scheduled as per Notice dt.23.05.2019 did not occur on 13.06.2019 and was cancelled.

12. Subsequently, the 1st respondent-Bank issued another fresh e-auction notice dt.22.06.2019 fixing the date of auction as 12.07.2019 which the petitioners claim to have not received. According to them this is also to be considered in SA.No.155/2019 filed by them.

13. Be that as it may, application in Crl.MP.No.320/2019 filed by the 1st respondent before the Chief Metropolitan Magistrate, Cyberabad, under Section 14 of the Act to take physical possession of the above property was allowed and warrant was issued on 27.04.2019 to an Advocate Commissioner to dispossess the petitioners 2 and 3 from the subject property and the warrant was executed by the Advocate Commissioner on 20.07.2019.

14. Assailing the same, this writ petition is filed.

15. Firstly, it is the contention of the counsel for petitioners that in the affidavit filed before the Chief Metropolitan Magistrate, Cyberabad, in Crl.MP.No.320/2019, the 1st respondent-Bank only mentioned dues as Rs.2,12,28,867 as on 17.09.2018, though the said application was filed on 12.03.2019 and in the meantime, the actual amount due was far less i.e. Rs.1,44,72,298.

16. Secondly, it is contended by the counsel for the petitioners that all the immoveable properties which were given as security for the loan granted to the 3rd respondent by 1st respondent-Bank, are not mentioned in the affidavit filed by the Officer of the 1st respondent-Bank before the said Magistrate, though the same is required to be stated as per Clause-iii of proviso of Section 14(1) of the Act.

17. Thirdly, it is contended that there is a statement in the said affidavit that the Demand Notice issued under Section 13(2) of the Act had been replied to by the petitioners and that the same was also considered by the 1st respondent-Bank. But, according to petitioners, the said notice under Section 13(2) of the Act was never been served on the petitioners and they had not submitted any representations/objections to the said notice.

18. When the counsel for 1st respondent-Bank was asked about these defects in the affidavit filed by the 1st respondent-Bank under Section 14 before the Chief Metropolitan Magistrate, Cyberabad, he admitted that the due amount as Rs.2,12,28,867/- only was mentioned as on 17.09.2018, but the due amount was in fact less, and it was Rs.1,44,72,298/- as on 29.04.2019 (as mentioned in para-4 of the order dt.28.10.2019 in WP.No.18734/2019 between the same parties in relation to an order passed under Section 14 of the Act, in respect of different item of property). He also admitted that all the properties, which were given as security to the loan given to 3rd respondent, are not mentioned in the said application filed

under Section 14 of the Act before the Chief Metropolitan Magistrate, Cyberabad.

19. Though he disputes the contention of the petitioners that the Notice under Section 13(2) of the Act had not been served on them in SA.No.155/2019 filed by the petitioners before the Debt Recovery Tribunal, he did not dispute that no objections or reply had been given to the said Demand Notice under Section 13(2) of the Act by the petitioners.

20. Therefore there is no question of considering the same by the 1st respondent-Bank even assuming that the said notice is served according to 1st respondent-Bank on the petitioners. Thus the statement in that regard made by the 1st respondent-Bank is a false plea.

21. It is most unfortunate that a Public Sector Nationalised Bank like the 1st respondent-Bank is not adhering mandatory requirements of procedure mentioned in SARFAESI Act, 2002 and the Rules made thereunder, and in this case in fact succeeded even dispossessing the petitioners 2 and 3 from the above property. This cannot be countenanced.

22. Therefore, the Writ Petition is allowed; the order in Crl.MP.No.320/2019 of the Chief Metropolitan Magistrate, Cyberabad, passed under Section 14 of the SARFAESI Act, 2002, is set aside; consequently, warrant of possession issued to the Advocate Commissioner as well as Panchanama filed by the said Advocate Commissioner in proof of dispossessing the petitioners 2 and 3 from the above property are also

set aside; and the 1st respondent-Bank is directed to deliver forthwith possession of the subject plot with all the articles seized by it at the time the Advocate Commissioner appointed by the Magistrate took possession of the subject plot. The 1st respondent shall also pay costs of Rs.10,000/- to the petitioners. However, liberty is granted to the 1st respondent-Bank to strictly adhere to the provisions of the Act and the Rules made there under if it wishes to take any steps under the Act for recovery of the balance amounts owed to it by the 3rd respondent.

23. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

10th March, 2020.
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Dt.10.03.2020

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