

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE SMT JUSTICE P.SREE SUDHA**

WRIT PETITION NOs.5048 and 5052 OF 2020

COMMON ORDER: *(Per Hon'ble Sri Justice P.Naveen Rao)*

In these two writ petitions, petitioner is an Educational Society. Petitioner-Educational Society is the tenant of the property owned by the respondents 2, 3, 4 and 6, who borrowed the loan from the respondent-LIC Housing Finance Limited. As the borrowers defaulted in repayment of the loan amount, respondent-Housing Finance Limited has taken recourse to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') to recover the amount due. In the process, respondent-Housing Finance Limited issued symbolic possession notice under Section 13 (4) & (12) of the SARFAESI Act. These notices are dated 10.02.2020. Challenging the same, these two writ petitions are filed. In addition, in W.P.No.5052 of 2022, petitioner is also challenging the notice issued under Rule 8(6) of Security Interest (Enforcement) Rules, 2002 giving thirty days notice of sale of properties.

2. This Court by order dated 05.03.2020, granted interim stay as prayed for in both writ petitions. Court is informed that by virtue of interim orders granted by this Court, the symbolic

possession was also not taken and no further steps are taken by the respondent-Housing Finance Limited.

3. Ordinarily, the writ petitioner ought to have availed the remedy under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal instead of availing writ remedy under Article 226 of the Constitution of India. In the normal circumstances, we would have relegated the petitioner to avail said remedy. But, having regard to the pleadings and the proceedings under challenge, we are of the opinion that instead of relegating the petitioner to avail remedy before the Debts Recovery Tribunal, liberty is granted to the respondent-Finance Limited to take recourse to the provisions of the SARFAESI Act afresh from Section 13 stage if the amounts are not recovered so far and if any such proceedings are initiated, it is open to the petitioner to work out remedy as available in law. Writ Petition is accordingly disposed of. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE P.SREE SUDHA

Date: 14.11.2022

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