

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA**

WRIT PETITION NO: 22262 OF 2022

Between:

Mr. Basavaboina Prithvi Raj, S/o. Basavaboina Jairaj, age 45 years, Occ. Business,
H.No.16-3-193/A, Plot No.326, Survey No.145, Vasanth Nagar, Hydernagar,
Kukatpally Municipality, Ranga Reddy District.

...PETITIONER

AND

M/s. Edelweiss Asset Reconstruction Company Limited, Represented by its
Authorized Officer, Having its registered office at 1st Floor, Edelweiss House Off
CST Road, Kalina, Mumbai - 400098.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the
circumstances stated in the affidavit filed therewith, the High Court may be
pleased to issue a writ of Mandamus or any other appropriate writ order or
direction by setting aside the advocate commissioner notice dated 22-04-2022
referring in CrI.M.P.No.220 of 2022 in pursuance of the Possession Notice dated
12-10-2021 which was allegedly issued without following the due process of law
and violation of the provisions of the SARFAESI Act and against principles of
natural justice and consequently direct the Debts Recovery Tribunal II, Hyderabad
to dispose of the SA IR (Dairy) No.474/2022 on merits.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in
the affidavit filed in support of the petition, the High Court may be pleased to grant
stay of all further proceedings in pursuance of the advocate commissioner notice
dated 22-04-2022, referring in CrI.M.P.No.220 of 2022 in pursuance of the
Possession Notice dated 12-10-2021 under section 13(4) as alleged under
SARFAESI Act, 2002 including taking physical possession of the property pending
disposal of the present Writ Petition.

Counsel for the Petitioner: SRI. CHEKURI YADAGIRI

Counsel for the Respondent: SRI SRINIVAS AKKAPAKA

The Court made the following: ORDER

HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
HONOURABLE MRS. JUSTICE SUREPALLI NANDA
W.P.No.22262 of 2022

Order: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Ch. Yadagiri, learned counsel for the petitioner.

2. Petitioner is aggrieved by notice dated 22.04.2022 issued by the Advocate Commissioner to hand over vacant physical possession of the schedule property.

3. It appears that for default by the petitioner in repayment of loan from HDB Financial Services Limited, the secured creditor invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), and assigned recovery of dues to the respondent, where after respondent issued notice under Section 13 (4) of the SARFAESI Act on 12.10.2021. As per the possession notice outstanding dues of the petitioner has been quantified at Rs.74,92,683.37 as on 19.07.2021.

4. It is stated that against the steps taken by the respondent under the SARFAESI Act, petitioner has filed securitization application before the Debts Recovery Tribunal-II at Hyderabad (Tribunal) under Section 17 of the SARFAESI Act, which has been numbered as S.A.(I.R) No.474 of 2022.

5. With the grievance that there is no Presiding Officer in the Tribunal rendering the same non-functional, present Writ Petition has been filed.

6. On due consideration and having regard to the orders passed by us in identical writ petitions, we are of the view that since petitioner has availed his statutory remedy under Section 17 of the SARFESI Act, he may proceed with his remedy for redressal of his grievance. That apart if the petitioner deposits 15% of the outstanding dues within 30 days from today, respondent shall not proceed further pursuant to the notice of the Advocate Commissioner dated 22.04.2022, which in any event would be subject to outcome of S.A.(I.R) No.474 of

2022. However, if there is any default on the part of the petitioner in making the payment as above, it would be open to the respondent to proceed in accordance with law for realization of dues.

7. This disposes of the Writ Petition. However, there shall be no order as to costs.

8. Miscellaneous applications, if any pending, also stand closed.

SD/-T.KRISHNA KUMAR
DEPUTY REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The Authorized Officer, M/s. Edelweiss Asset Reconstruction Company Limited, Having its registered office at 1st Floor, Edelweiss House Off CST Road, Kalina, Mumbai - 400098.
2. One CC to Sri Chekuri Yadagiri, Advocate [OPUC]
3. One CC to Sri Srinivas Akkaraka, Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

CHR
GJP
pr

HIGH COURT
DATED:28/04/2022

ORDER

W.P.No.22262 of 2022



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

*6 copies
1 copy
16/8/22*