

**HOB'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**AND**  
**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

**W.P.No.13689 of 2023**

**O R D E R:** *(per Hon'ble D.V.S.S.Somayajulu)*

This writ petition is filed for the following relief:

'..pleased to issue a writ order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring Notice Dt. 11.05.2023 issued by 4th Respondent under Rule 86 of The Security Interest Enforcement Rules, SARFAESI Act 2002 indicating their intention to sell the Schedule property of the 1<sup>st</sup> Petitioner viz., All that piece and parcel of site in R.S.No.258, Assessment No.1031, D.No.6-18, in an extent of 2420 Sq. Yards or equal to 2032.80 Sq Meters together with Agricultural Godown of 7820 Sq.ft. situated at Ganguru Village, Penamaluru Mandal, Krishna District and all further steps Pursuant and consequent thereto including the Scheduled process of e-auction of said property as illegal, irregular, irrational, arbitrary without following the procedure contemplated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules framed thereunder contrary to settled principles of Natural Justice and without any authority of law and without any jurisdiction and offends articles 14 21 and 300A of Constitution of India and consequently direct the respondents not to proceed with sale of the aforesaid property of the 1st Petitioner and to pass...'

2. This Court has heard Sri Sita Ram Chaparla, learned counsel for the petitioners and Sri Sreedhar Valiveti, learned counsel for the respondents.

3. Learned counsel for the petitioners argues in line with what is stated in the writ petition. He raises a contention that the loans were availed and the account was declared as NPA in November, 2020; later another loan was given on 25.03.2021. Therefore, he contends that the 2<sup>nd</sup> respondent-Bank has committed a serious error in taking further steps. He contends that another loan was given because the creditworthiness of the petitioners was there. He also submits that the respondents approached an Arbitrator, who also passed Awards which are contrary to law. They are also challenged. He contends that after an Award is passed, the respondents do not have a right to invoke the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). He also raises an issue about the Covid moratorium being in a place, but the same not being considered for deciding the NPA. Lastly, he also argues that the Security Interest is not registered with the Central Registry. It is also urged that the procedure under the SARFAESI Act was not followed and that after the demand notice dated 17.03.2022, no further notice was issued under section 13(4) of the SARFAESI Act.

4. In reply to this, Sri Sreedhar Valiveti, learned counsel for the respondents submits that the writ petition is not a proper remedy and that time and again Hon'ble Supreme Court clearly held that appropriate step or proceeding is to approach the Debt Recovery Tribunal (DRT). He also relies upon the case law, which is annexed with counter. On facts, he submits that heavy amount is outstanding and a total loan amount of Rs.5.13 crores was taken as a loan. Since the amount was not repaid, the account was classified as NPA. It is submitted that during the Covid period, an extra financial assistance was given to benefit the writ petitioners and that it cannot be advantage of. He points out that no specific data is filed to show that the classification of NPA is not correct. It is also contended that complicated issues of fact cannot be raised before this Court. He points out that the possession notices dated 24.05.2022 were sent by Registered Post; respondent Nos.1 and 2 have received the notice and the notice sent to respondent Nos.3 and 4 returned with an endorsement 'intimation served'. Therefore, it is his contention that there is deemed service. He also contends that the procedure under the SARFAESI Act was scrupulously followed. He contends that the Arbitration and SARFAESI Act operate in different fields and that there is no bar for the institution to take steps under both the Acts. He also contends that the moratorium was given to SSI units only and not to pure commercial businesses like that of the writ petitioners. Lastly,

he submits that there is no pleading about the lack of registration with the Central Registry and that the same was in fact registered. He relies upon a document filed with the Central Registry with Security Interest ID No.400016493343. He therefore submits that the writ should be dismissed.

5. This Court, after hearing the counsels and perusing the documents etc., notices that demand notice was issued on 17.03.2022. The possession notice was issued on 24.05.2022 under section 13(4) of the SARFAESI Act. Paper publication of the possession notice was made on 28.05.2022. The application filed by the Bank under section 14 of the SARFAESI Act was allowed by the Chief Metropolitan Magistrate on 16.03.2023. Rule 8(6) notices are dated 11.05.2023 and the auction publications are made on 10.05.2023 in the newspapers. Auction proceeding were conducted on 15.06.2023.

6. This Court therefore *ex-facie* does not find any error in the steps taken. The Arbitration Awards are also filed. These are dated 23.03.2023. As stated by the learned counsel for the petitioners, these are supposedly challenged. In the opinion of this Court, both the remedies available can be simultaneously exercised by the respondents. As things stand, they have a right to recover the loan outstanding and for the said purpose, they are entitled to invoke the provisions of the SARFAESI Act and also the Arbitration Act

simultaneously (***M.D.Frozen Foods Exports (P) Ltd., v. Hero Fincorp Ltd.***),<sup>1</sup>

7. The law cited by the respondents about the writ petition, in the opinion of this Court, is squarely and clearly applicable to the facts of this case. Time and again, the Hon'ble Supreme Court has clearly said that the Court should be extremely circumspect of granting orders in cases of the SARFAESI Act. Any person aggrieved by the actions taken has an effective alternative remedy and approach the Debt Recovery Tribunal. The judgment in the case of ***State Bank of Travancore v. Mathews***<sup>2</sup> still continues to be good law. In the recent past also, the Hon'ble Supreme Court time and again held that a writ is not at all an effective remedy. As far as the creation of the security interest is concerned, learned counsel for the respondents has filed a document showing that the security interest has been submitted. There is no pleading about the same but it is noted. The lack of this registration will not also vitiate the entire proceedings.

8. In that view of the matter, this issue is not pleaded. This by itself will not vitiate the entire proceedings.

9. Considering all the above, the writ petition is dismissed. It is made clear that if the petitioners are actually aggrieved of the classification of the NPA etc., as urged, their remedy lies before the

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<sup>1</sup> (2017) 16 SCC 741

<sup>2</sup> (2018) 3 SCC 85

DRT and not the writ Court. The dismissal of the writ will not preclude the petitioners from agitating their case in the appropriate Tribunal with appropriate pleadings and proof. All legal/factual pleas are left open for both parties. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

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**D.V.S.S.SOMAYAJULU,J**

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**DUPPALA VENKATA RAMANA,J**

Date: 21.07.2023  
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