

**THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION No.24016 of 2018**

**ORDER:** (*Per Hon'ble Sri Justice Sanjay Kumar*)

Challenge in this writ petition is to the order dated 30.04.2018 passed by the learned Chief Judicial Magistrate, Nalgonda (Assistant Sessions Judge), in CrI.MP.No.62 of 2018. The said petition was filed by the State Bank of India under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, seeking to take possession of the secured asset offered by the petitioner, the borrower, in relation to the loan facility availed by him.

2. Sri P.Prabhakar Reddy, learned counsel for the petitioner, would contend that the learned Chief Judicial Magistrate, Nalgonda, failed to abide by the requirements of Section 14 of the SARFAESI Act and therefore, the action of the Bank in taking over possession of the petitioner's property through the Advocate Commissioner pursuant thereto cannot be sustained. Learned counsel would place reliance on the decision of this Court in **Anantha Reddy Nadeaguoni V/s Union of India<sup>1</sup>**.

3. Sri Podila Hari Prasad, learned counsel for the State Bank of India, would state that no order was passed by the learned Chief Judicial Magistrate, Nalgonda, upon the petition filed under Section 14 of the SARFAESI Act and straightaway a warrant was issued requiring the Advocate Commissioner to take over possession of the secured asset.

---

<sup>1</sup> 2016 (6) ALD 225 (DB)

4. In this regard, it may be noted that after the insertion of the first *proviso* to Section 14 (1) of the SARFAESI Act by Act No.1 of 2013 with effect from 15.01.2013, the Magistrate concerned is required to satisfy himself that the contents of the affidavit duly affirmed by the authorised officer of the secured creditor fulfils the requirements as set out in clauses (i) to (ix) stipulated under the said *proviso*.

5. The Supreme Court had occasion to consider this provision in **Standard Chartered Bank V/s V.Noble Kumar**<sup>2</sup> and made it clear that after the amendment of Section 14 of the SARFAESI Act, the Magistrate concerned can pass suitable orders for taking possession of the secured asset only after being satisfied that the contents of the affidavit and in this regard he would have to record his satisfaction. Following this judgment, this Court in **Anantha Reddy Nadeaguoni**'s case (1 supra), observed that though the Magistrate concerned is not required to record detailed reasons in proof of his satisfaction, there must at least be evidence of application of mind by the said Magistrate to the contents of the affidavit to satisfy himself that the statutory requirements have been duly complied with.

6. In the case on hand, it is the admitted position that the learned Chief Judicial Magistrate, Nalgonda, did not pass a separate order and straightaway issued the Advocate Commissioner's warrant. Perusal thereof reflects that the learned Magistrate did not even choose to record that he had perused the

---

<sup>2</sup> (2013) 9 SCC 620

contents of the affidavit filed by the Bank or that he was satisfied therewith. The warrant issued was therefore in clear violation of the statutory mandate and the law laid down by the Courts in that regard.

7. As we are now informed that the said warrant was acted upon and the Bank took over possession of the secured asset, the same would have to be stayed, as we find that the warrant itself was without legal foundation.

8. The writ petition is accordingly allowed setting aside the order dated 30.04.2018 passed by the learned Chief Judicial Magistrate, Nalgonda in CrI.MP.No.62 of 2018. In consequence, the State Bank of India shall return the possession of the secured asset which was taken over pursuant to the aforesaid warrant dated 30.04.2018 to the petitioner through the Advocate Commissioner, within one week from the date of receipt of a copy of this order. This order shall however not preclude the Bank from initiating measures afresh in accordance with the due procedure for obtaining possession of the secured asset. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

---

**SANJAY KUMAR, J**

---

**T.AMARNATH GOUD, J**

Date: 31.07.2018

Note: Issue CC in two days.

B/o. TJMR