

[3418]

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

TUESDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT PETITION NO: 23315 OF 2024

Between:

Smt. Rita Kaur @ Mrs. Sardar Rita Kaur, W/o. Avathar Singh, aged about 45 years, Occ House wife, R/o. H.No. 2-6-95, Sikhwadi, Karimnagar, Karimnagar District

...PETITIONER

AND

1. The Andhra Pradesh State Financial Corporation, Nizamabad Branch, D.No. 6-2-136, Opp Zilla Parishad, Subashnagar, Nizamabad-503002, Rep. by its Authorized Officer.
2. M/s. Sri Balaji Pipe Industries, Rep. by Proprietrix Smt. B. Sunita, H.No. 5-3-347, Vidya Nagar Colony, Kamareddy-503111, Telangana State.
3. Sardar Avataar Singh, S/o. Laxman Singh, aged major, Occ business, R/o. 2-6-58, Sikhwadi, Karimnagar-505001, Karimnagar District, Telangana State.

...RESPONDENTS

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 an appropriate Writ, Order or Direction more particularly in the nature of Writ of CERTIORARI by calling for the records pertaining to proceedings vide order dated 01/07/2024 passed in CrI.M.P.No. 79 of 2024 on the file of the court of the Chief Judicial magistrate at Karimnagar and consequential vacation notice dated 06-08-2024 and set aside the same by duly declaring the same as arbitrary, illegal, capricious and violative of Articles 14, 21 and 300-A of the constitution of India

IA NO: 3 OF 2024

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 suspend the operation of impugned order dated 01/07/2024 passed in CrI.M.P.No. 79 of 2024 on the file of the court of the Chief Judicial Magistrate at Karimnagar including the vacation notice dated 06/08/2024, pending disposal of the above writ petition

**Counsel for the Petitioner: SRI V. RAVI KUMAR REDDY REP
SRI P. SAJAN KUMAR**

Counsel for the Respondent No.1: SRI M. HAMSA RAJ, SC

Counsel for the Respondent Nos. 2&3:--

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION No.23315 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. V.Ravi Kumar Reddy, learned counsel representing Mr. P.Sajan Kumar, learned counsel for the petitioner.

Mr. M.Hamsa Raj, learned Standing Counsel for respondent No.1.

2. In this writ petition, the petitioner has assailed the validity of the order dated 01.07.2024 passed by the Chief Judicial Magistrate at Karimnagar in CrI.M.P.No.79 of 2024, by which Advocate Commissioner has been appointed in a proceeding under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (referred to hereinafter as 'the SARFAESI Act').

3. The Supreme Court in **United Bank of India v. Satyawati Tondon**¹ has deprecated the practice of the High Courts in entertaining the writ petitions despite availability of an alternative remedy. The aforesaid view has also been reiterated by the Supreme Court in **Varimadugu Obi Reddy v. B.Sreenivasulu**². The relevant extract of paragraph 36 reads as under:

“36. In the instant case, although the respondent borrowers initially approached the Debts Recovery Tribunal by filing an application under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the respondent borrowers approached the High Court by filing the writ application under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the 2002 Act.”

¹ (2010) 8 SCC 110

² (2023) 2 SCC 168

contemplated under 2nd proviso to Section 18 of the 2002 Act.”

4. The view taken in **Satyawati Tondon** (supra) has been reaffirmed by a three Judge Bench of the Supreme Court in **PHR Invent Educational Society v. UCO Bank**³.

5. Admittedly, against the aforesaid order, an appeal lies before the Debts Recovery Tribunal.

6. In view of the aforesaid enunciation of law, learned counsel for the petitioner submits that the petitioner be granted the liberty to approach the Debts Recovery Tribunal.

7. In view of aforesaid submission, the Writ Petition is disposed of with the liberty to the petitioner to file an appeal against order dated 01.07.2024 before the Debts Recovery Tribunal.

³ 2024 SCC OnLine SC 528

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Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

SD/- V.KAVITHA
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The Authorized Officer, Telangana State Financial Corporation, Nizamabad Branch, D.No.6-2-136, Opp Zilla Parishad, Subashnagar, Nizamabad-503002,
2. One CC to SRI. P SAJAN KUMAR, Advocate [OPUC]
3. One CC to SRI. M. HAMSA RAJ, Advocate [OPUC]
4. Two CD Copies

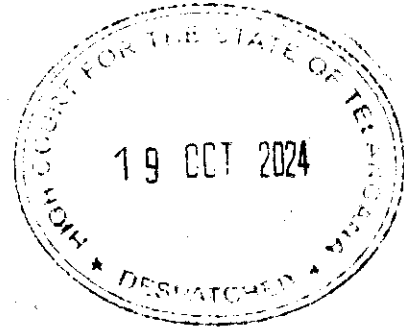
B M

BSR



HIGH COURT

DATED:27/08/2024



ORDER

WP.No.23315 of 2024

**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS**

⑥ VLV
28/9/24