

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

THURSDAY, THE SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION NO: 38722 OF 2016

Between:

V.Srinivasa Rao, S/o. Bhaskar Rao, aged 40 years, Occ Business, R/o.Flat No.304,
Sri Venkata Shiva Nilayam, New Mirjalguda, Malkajiri, Hyderabad.

.....PETITIONER

AND

1. The State Bank of India, Retail Assets Central Processing Centre-III, 2nd floor, CCPL Sterling Buildings, Himayatnagar, Hyderabad. Rep. by its Authorized Officer.
2. Pulipati Sita Rama Prasad, S/o. P.Rosaiah, R/o. SRT-661, Asmitha Residency, Near Kanakadurga Temple, Sanathnagar, Hyderabad.

.....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 writ order or direction more particularly one in the nature of WRIT OF MANDAMUS to declare the action of the respondent No.1 in proceeding against the property of the petitioner situated in 3rd floor of Sri Venkata Shiva Nilayam New Mirjalguda, Malkajiri Circle, Ranga Reddy District under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 even though the petitioner did not obtain any loan from the 1st respondent Bank and no security interest is created in favour of the 1st respondent bank in respect of the above said property as the 2nd respondent purchased the premises situated towards eastern side of the

building and obtained loan by creating security over the said property to the 1st respondent bank and thereafter failed to repay the loan in favour bank as arbitrary, illegal and contrary to Section 13(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and consequently direct the 1st respondent not to proceed against the premises of the petitioner under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in the interest of justice.

I.A.NO:1 OF 2016 (WPMP.NO:47706 OF 2016)

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 direct the 1st respondent not to proceed against the premises of the petitioner under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 pending disposal of the writ petition in the interest of justice.

Counsel for the Petitioner : SRI P.NAGENDRA REDDY

Counsel for the Respondent No.1 : SRI PODILA HARI PRASAD

Counsel for the Respondent No.2 : --

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.38722 of 2016

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

In this writ petition, the petitioner, *inter alia*, prays for a direction to declare the action of the State Bank of India in proceeding against the flat belonging to the petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as, "the SARFAESI Act"), as illegal and arbitrary on the ground that the petitioner has not taken any loan from the State Bank of India.

2. A Bench of this Court had entertained the writ petition and had granted an interim order of *status quo* on 10.11.2016.

3. Admittedly, against the impugned proceedings, a statutory remedy lies under the provisions of the SARFAESI Act.
4. 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 para 36 in **Varimadugu Obi Reddy** (supra) 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

¹ (2010) 8 SCC 110

² (2023) 2 SCC 168

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.”

5. 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 and others**³.

6. In view of aforesaid enunciation of law by the Supreme Court, we are not inclined to entertain the writ petition.

7. The writ petition is pending before this Court since 2016 in which an interim order of *status quo* is continuing. In case the grievance of the petitioner still survives, he is granted the liberty to approach the appropriate forum for redressal of his grievance. The interim order granted on 10.11.2016 shall continue for a period of eight weeks.

³ 2024 SCC OnLine SC 528

8. With the aforesaid liberty, the writ petition is disposed of.

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

**SD/- K.SREERAMA MURTHY
ASSISTANT REGISTRAR**

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SECTION OFFICER

To

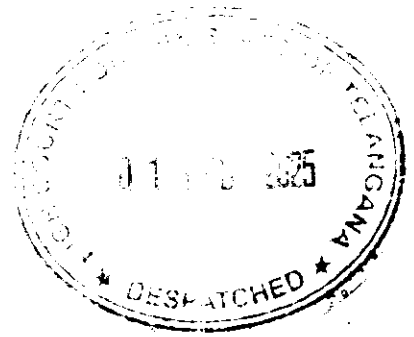
1. The Authorized Officer, State Bank of India, Retail Assets Central Processing Centre-III, 2nd floor, CCPL Sterling Buildings, Himayatnagar. Hyderabad.
2. One CC to SRI P.NAGENDRA REDDY, Advocate [OPUC]
3. One CC to SRI PODILA HARI PRASAD, Advocate [OPUC]
4. Two CD Copies

**SA
PSK**



HIGH COURT

DATED:02/01/2025



ORDER

WP.No.38722 of 2016

DISPOSING OF THE W.P

WITHOUT COSTS.

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27/1/2025