

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

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT

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

WRIT PETITION NO: 25663 OF 2022

Between:

Mohan Kumar Chinnaswamy, Age. 43 years , Occ. Private Employee, Flat No.303, 3rd Floor, Kotakam Pranathi, MCH No.6-3-609/14, Plot No.4, Anand Nagar Colony, Khairatabad, Hyderabad-500082.

...PETITIONER

AND

HDFC House, Rep. by its Authorized Officer, H.No.3-6-310, Hyderguda Road, Basheer Bagh, Hyderabad-500029

...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 grant an appropriate Writ, order or direction more particularly one in the nature of Writ of mandamus declaring the action of the respondent in issuing the vacate notice dated 31/05/2022 through an Advocate Commissioner in pursuance of the order dated 29/04/2022 in Crl.M.P. 53 of 2022 IN S.R. No. 4935 of 2021 by Honourable Chief Metropolitan Magistrate, Nampally to vacate the petitioner's residential property bearing Flat No.303, in second floor admeasuring 1173Sft inclusive of the common areas and balconies and parking space along with undivided share in the land admeasuring 38sq.yds out of 718Sq.yards of the premises bearing no.4, H.No.6-3-609/ 14, Anand Nagar Colony, Khairatabad, Hyderabad 500004 as illegal, arbitrary, without following the due procedure, violative of Article 21 and 300-A of the Constitution of India and contrary to the SARFAESI Act and consequently set aside the same.

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 stay all further proceedings including taking of physical possession of the petitioner's residential property bearing Flat No.303, in second floor admeasuring 1173Sft inclusive of the common areas and balconies and parking space along with undivided share in the land admeasuring 38sq.yds out of 718Sq.yards of the premises bearing no.4, H.No.6-3-609/ 14, Anand Nagar Colony, Khairatabad, Hyderabad 500004 in pursuance of the order dated 29/04/2022 in Crl.M.P. 53 of 2022 IN S.R. No. 4935 of 2021 by Honourable Chief Metropolitan Magistrate, Nampally, pending disposal of the main Writ Petition.

**Counsel for the Petitioner: SRI. SREENADH REDDY ON BEHALF OF
SRI. NAGESHWAR RAO PUJARI**

Counsel for the Respondent: NONE APPEARED

The Court made the following:

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

WRIT PETITION No.25663 of 2022

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

Heard Mr. Sreenadh Reddy, learned counsel appearing on behalf of Mr. Nageshwar Rao Pujari, learned counsel for the petitioner.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner has challenged legality and validity of the vacation notice dated 31.05.2022 issued by the Advocate Commissioner.

3. Be it stated that petitioner is the borrower of respondent, which is a private financial institution. For default in repayment, respondent initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the 'SARFAESI Act'). In this connection, respondent issued demand notice under

Section 13(2) of the SARFAESI Act on 27.02.2017 followed by possession notice dated 30.05.2017 under Section 13(4) of the SARFAESI Act. Finally, respondent approached the Chief Metropolitan Magistrate, Hyderabad under Section 14 of the SARFAESI Act, whereafter warrant was issued appointing Advocate Commissioner for taking over physical possession of the schedule property. It was thereafter that the Advocate Commissioner issued the impugned notice.

4. Learned counsel for the petitioner submits that as per order passed by the Chief Metropolitan Magistrate, outstanding dues of the petitioner has been quantified at Rs.31,22,758.00. Aggrieved by the action taken by the respondent under the SARFAESI Act, petitioner has filed securitisation application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-II, Hyderabad, which has been numbered as S.A(I.R).No.647 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. After hearing learned counsel for the petitioner and on due consideration, Court is of the view that since petitioner has availed his statutory alternative remedy under Section 17 of the SARFAESI Act, he may pursue the said remedy. Additionally, if the petitioner deposits 15% of the outstanding dues within 30 days from today, respondent shall not proceed further on the basis of the notice dated 31.05.2022 issued by the Advocate Commissioner. 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 take steps in accordance with law for realisation of outstanding dues. Till such deposit by the petitioner within the aforesaid period, Advocate Commissioner shall refrain from taking steps on the strength of the notice dated 31.05.2022.

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

8. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

SD/- M. MANJULA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Authorized Officer, HDFC House, H.No.3-6-310, HYderguda Road, Basheer Bagh, Hyderabad-500029
2. One CC to Sri. Nageshwar Rao Pujari, Advocate [OPUC]
3. Two CD Copies.

PM



HIGH COURT

DATED:15/06/2022

ORDER

W.P.No.25663 of 2022



**Disposing of the WP
Without costs.**

④ VLV
17/6/22