

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

WEDNESDAY, THE TWENTY FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT PETITION NO: 28204 OF 2010

Between:

Mr. Shaik Mahommed Ahmed, Flat No. 405, 4th Floor, D.No. 9-4-86, D.V.
Apartments, Salarjung Colony, Mehdiapatnam, Hyderabad

...PETITIONER

AND

LIC Housing Finance Ltd., 3rd Floor, Maitrivanam (HUDA), Ameerpet, Hyderabad
Rep. by its Authorised Officer

...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 a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ, Order or direction the like nature directing the respondent not proceed under orders dt. 14.10.2010 in CrI.M.P.No.3143/2010 on the file of Chief Metropolitan Magistrate, Hyderabad and holding the same as null and void being contrary to law.

I.A. NO: 1 OF 2010(WPMP. NO: 35970 OF 2010)

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 direct the respondents to stay proceedings pursuant to the orders dt. 14.10.2010 in CrI.M.P.No.3143/2010 on the file of Chief Metropolitan Magistrate, Hyderabad pending disposal of the above writ petition.

Counsel for the Petitioner: SRI SRINIVAS CHITTURU (NOT PRESENT)

Counsel for the Respondents: SRI S. SIVA SHANKER

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.28204 of 2010

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

None for the parties.

2. In this writ petition, the petitioner has assailed the validity of the order dated 14.10.2010 in CrI.M.P.No.3143 of 2010 passed by the Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as, "the SARFAESI Act").

3. Admittedly, against the aforesaid order a statutory remedy lies under Section 17 of the SARFAESI Act in view of the judgment of the Supreme Court in **Bजारंग श्यामसुंदर आगरवाल व. केंद्रीय बैंक ऑफ इंडिया**¹.

¹ (2019) 9 SCC 94

4. The Supreme Court in **United Bank of India v. Satyawati Tondon**² 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 Supreme Court in **Varimadugu Obi Reddy v. B.Sreenivasulu**³. The relevant extract of para 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

² (2010) 8 SCC 110

³ (2023) 2 SCC 168

“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. In view of aforesaid enunciation of law by the Supreme Court, we are not inclined to entertain the writ petition. However, liberty is reserved to the petitioner to take recourse to the remedy under Section 17 of the SARFAESI Act.

6. A Bench of this Court, while entertaining the writ petition, had granted an interim order.

7. In view of the aforesaid, it is directed that for a period of four weeks, the interim order granted earlier by a Bench of this Court in this writ petition shall continue and in case the petitioner avails the remedy under Section 17 of the SARFAESI Act within the aforesaid period of four weeks from today, he shall be entitled to the benefit of Section 14 of the Limitation Act, 1963.

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.

//TRUE COPY//

SD/- K. VENKAIAH
ASSISTANT REGISTRAR

SECTION OFFICER

To,

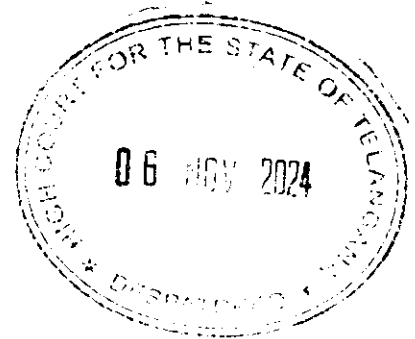
1. The Authorised Officer, LIC Housing Finance Ltd., 3rd Floor, Maitrivanam (HUDA), Ameerpet, Hyderabad.
2. One CC to SRI SRINIVAS CHITTURU, Advocate [OPUC]
3. One CC to SRI S. SIVA SHANKER, Advocate [OPUC]
4. Two CD Copies

MP
GJP



HIGH COURT

DATED:21/08/2024



ORDER

WP.No.28204 of 2010

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

⑥ VLV
27/9/24