

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

THURSDAY, THE FOURTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE

THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION NO: 31827 OF 2024

Between:

1. Smt. Shobha Gullapally, W/o. Sudhakar, aged 50 years, Occ. House wife, R/o. H No. 11-22-60/2 Kashibugga, Near Shivalayam, Warangal 506 002
2. Naresh Gullapally, S/o.Sudhakar, aged 45 years, Occ. Business R/o. H No. 11-22-60/2, Kashibugga, Near Shivalayam, Warangal 506 002
3. Shanbhavi 1 Gram Gold Limitation Jewellery, H No. 8-2-89, JPN Road, Warangal

...PETITIONERS

AND

1. Union of India, Rep by its Secretary, Ministry of Finance Sastry Bhavan, New Delhi
2. Cholamandalam Investment and Finance Co., Ltd., Hanumakonda, having branch at 3rd Floor D No. 2-1-1275, Lopamura Arcade Mall, Naimnagar Main Road, Hanumakonda, Warangal 500 009 Rep. by Authorise Officer, Jatothu Hussain, Aged 34 years, Occ. Regional Sales Manager
3. Sri Bollam Nagaraju, Advocate Commissioner, Hanamkonda Bar Association Appointed by the Hon'ble Chief Judicial Magistrate Warangal in Crl MP No. 83 of 2024, dated 27.07.2024

...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, declaring the 3rd respondent in seizing the house property of the petitioners without issuing the 15 days notice and without obtaining any explanation and without giving breathing time to the petitioners illegally and forcibly thrown out the petitioners and her tenants from the house into the roads and seized the property by the 3rd respondent by putting seal of the house

property of the petitioners i.e., H No. 11-22-60/2 Part, admeasuring 98.59 sq. yards situated at Kashibugga, Warangal City and District basing on the appointment of advocate commissioner Order dated 27.07.2024 in Cri MP No. 83 of 2024 passed by the Chief Judicial Magistrate, Warangal is illegal, arbitrary and against the principles of natural justice and also violative of Articles 14, 19, 21 and 300-A of Constitution of India and consequently direct the respondents to break open the seal of the house and handed over the house to the petitioners immediately.

IA NO: 1 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 Direct the respondents particularly 3rd respondent to break open the seal of the seized property of the petitioners house bearing H. No. 11-22-60/2 Part, admeasuring 98.59 sq. yards situated at Kashibugga, Warangal City and District and handed over the same to the petitioners by giving time for repayment of the loan amount, pending disposal of the main writ petition.

Counsel for the Petitioner :SRI ARRAM SHIVASHANKAR

Counsel for the Respondent No.1 : SRI A.KRANTI KUMAR REDDY

Counsel for the Respondent No.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.31827 of 2024

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

Mr. A.Shiva Shankar, learned counsel for the petitioners.

Mr. A.Kranti Kumar Reddy, learned counsel for the respondent No.1.

2. In this writ petition, the petitioners have assailed the validity of the order dated 27.07.2024 in Criminal M.P.No.83 of 2024 passed by the court of Chief Judicial Magistrate, Warangal, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as, "the SARFAESI Act").

3. Admittedly, against the aforesaid order, the petitioners have the remedy of approaching the Debts Recovery Tribunal. However, instead of approaching the

Debts Recovery Tribunal, the petitioners have filed the writ petition.

4. This Court, by an order dated 09.01.2024 passed in W.P.No.33239 of 2023, has held that if any person is aggrieved by the steps taken under Section 13(4) of the SARFAESI Act or the order passed under Section 14 thereof, then the aggrieved person has to approach the Debts Recovery Tribunal by way of an appeal/application under Section 17 of the SARFAESI Act.

5. 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 in **Varimadugu Obi Reddy** (supra) reads as under:

“36. In the instant case, although the respondent borrowers initially approached the Debts Recovery

¹ (2010) 8 SCC 110

² (2023) 2 SCC 168

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.”

6. 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.

7. 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 petitioners to avail the statutory remedy before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

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.

SDI-A.V.S. PRASAD
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

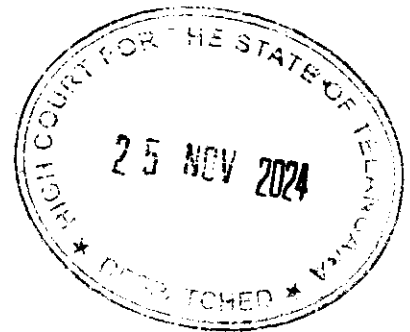
1. The Secretary, Ministry of Finance Union of India, Sastry Bhavan, New Delhi
2. One CC to SRI ARRAM SHIVASHANKAR, Advocate. [OPUC]
3. One CC to SRI A.KRANTI KUMAR REDDY, Advocate. [OPUC]
4. Two CD Copies.

BSK

BS ✓

HIGH COURT

DATED:14/11/2024



ORDER

WP.No.31827 of 2024

**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS**

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h.b
25/11/24