

**IN THE HIGH COURT OF ANDHRA PRADESH:
AT AMARAVATI**

Writ Petition No.30350 of 2021

Between:

Nalluri Satyanarayana, S/o. Butchaiah,
Aged 65 years, Occ: retired, resident of H.No.3-180-136/3,
Himani Nagar, 1st Line, Reddypalem,
Guntur Town, Guntur District.

.... Petitioner

And

1) The Union Bank of India, Guntur Main Branch,
Rep. by its Chief Manager & Authorized Officer and **Other.**

....Respondents.

Writ Petition No.3334 of 2022

Between:

Konneboina Srinivas Rao, S/o. Subba Rao,
Aged about 49 years, Occ: Business,
R/o.D.No.11-10, Tirumala Nagar,
Gorantla, Guntur, Guntur District – 522 034.

.... Petitioner

And

1) The Union Bank of India, Guntur Main Branch
and **other.**

....Respondents.

Date of Judgment pronounced on : 12.04.2022

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT. JUSTICE V. SUJATHA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

JUSTICE C. PRAVEEN KUMAR

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AND

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....Respondents.

! Counsel for the Petitioner(s) : Sri D. Krishna Murthy.

Counsel for the Respondents : Ms. V. Dyumani,
Learned counsel for
R.1/Bank.

<Gist :

>Head Note:

? Cases referred:

- 1) AIR 2017 Patna 126.
- 2) (2020) 10 SCC 659.

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No. 30350 OF 2021

AND

WRIT PETITION No. 3334 OF 2022

COMMON ORDER: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) These two Writ Petitions are filed by the Guarantor, as such they are disposed of by this Common order:-

2) The facts, in issue, are as under:

i. The Second Respondent/borrower obtained loan from the First Respondent to an extent of Rs.95,00,000/- on cash credit facility. The Petitioner is said to have deposited original title deed with the Bank and also executed and registered a Memorandum of Deposit of Title Deeds vide Document No. 5890 of 2015 at the Office of Sub-Registrar, Guntur.

ii. As the borrower failed to pay the amount despite repeated demands, the loan account of the borrower was declared as N.P.A Thereafter a notice under Section 13(2) is said to have been issued on 31.03.2021 to the borrower and guarantors incorporating the list of mortgaged properties and demanding the outstanding

due amount of Rs.1,05,83,668.31 ps. As no representation was received to the notices issued, possession notice under Rule 8(1) was issued, intimating taking possession of the properties belonging to borrower and guarantors. This possession notice issued under Section 13(4) of SARFAESI Act, is under challenge now.

3) Sri. D. Krishna Murthy, the learned Counsel for the Petitioners mainly submits that the Petitioners cannot be called as guarantors as they are not aware about their property being mortgaged to the Bank. According to him, the borrower committed theft of these documents and obtained loan by forging their signatures and mortgaging the title documents. He further submits that even assuming that they are guarantors, no notice under Section 13(2) was served on them and the said notice is not in terms of Rules 3 and 4 of the Security Interest (Enforcement) Rules, 2002. He relies upon a judgment of the Patna High Court in **Syndicate Bank V. Rajesh Kumar and Ors¹**, to contend that notices should be issued separately to the borrower and guarantor.

¹ AIR 2017 Patna 126

4) On the other hand, Ms. V. Dyumani, learned Counsel appearing for Respondent Bank, opposed the same contending that the notices issued separately under Section 13(2) of the Act, were served on the Writ Petitioners and borrower and in the absence of any representation, the Bank proceeded further, after declaring the account as N.P.A. She further submits that proof of service of notices issued under Section 13(2) are also filed along with the counter. According to her, the Petitioners are set-up by the borrower, who never choose to come before this Court and explain his stand.

5) The points that arises for consideration in these two Writ Petitions are as under:

- (i) Whether the notices issued under Section 13(2) of the SARFAESI Act are served on the Petitioners.
- (ii) Whether the Petitioners are aware about the issuance of possession notice under Section 13(4).
- (iii) Whether there was non-compliance of Rule 3 of the Security Interest (Enforcement) Rules, 2002, as no separate notice was issued to the Petitioners-Guarantors.
- (iv) Whether the borrower played fraud by committing theft of the documents relating to subject property

and then obtained loan by mortgaging the same, without the knowledge of the Petitioners.

6) In order to appreciate the rival contentions, it would be appropriate to refer to Sections 13(2), 13(4) of SARFAESI Act, 2002, and Rule 3 of the Security Interest (Enforcement) Rules, 2002, which are as under:-

Sections 13(2) and 13(4) of SARFAESI Act, 2002.

“13. Enforcement Of Security Interest.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

¹[Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

⁴[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

“Rule 3 of the Security Interest (Enforcement) Rules, 2002.

3. Demand notice.—

(1) The service of demand notice as referred to in sub-section (2) of section 13 of the 1[Act] shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents of behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service: Provided that where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the

contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

- (2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).
- (3) Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be served in the same manner as provided in this rule.
- (4) Where there are more than one borrower, the demand notice shall be served on each borrower.”

7) The first ground urged by the Counsel for the Petitioner is that of “fraud”. According to him, the borrower who is their relative committed theft of the original documents from their houses and used the same in obtaining loan/CCF. The plea taken appears to be slightly strange. It is very difficult to believe that the borrower, who is related to the guarantors, would have committed theft from the houses of both the Guarantors, without their knowledge.

8) Further, the report to the police appears to have been given after filing of Writ Petitions before this Court. The affidavits in support of Writ Petition No. 30350 of 2021 and Writ Petition No. 3334 of 2022 were sworn in on 20.12.2021 and on 05.02.2022 respectively. If really, the report was lodged before the Nallapadu Police Station on 18.12.2011 and before Spandana on 03.01.2022, the affidavits filed in support of the Writ Petitions should disclose the same but they are silent on this aspect. On the other hand, the affidavit

filed in respect of W.P. No. 3334 of 2022, dated 05.02.2022, it was averred that the “Petitioner is lodging a complaint”. Therefore, the plea of theft and lodging of report appears to be an after thought and set-up to create a defence.

9) Be that as it may, the main plea taken is non-service of notice under Section 13(2) and even assuming that it was served, the same is not in accordance with Rules 2 and 4.

10) Insofar as service of notice under Section 13(2) is concerned, the learned Counsel for the Bank placed on record, along with counter affidavit, material in the form of postal receipts and acknowledgment cards duly signed by the guarantors or their agents or representative. In the reply filed, it is averred that acknowledgment cards are managed. But, there is no reason for the Bank to manage the acknowledgment cards, as notice if sent to correct address by registered post, amounts to deemed service in view of Section 27 of the General Clauses Act. Further, the Petitioners are not disputing the correctness of their address mentioned in the acknowledgment cards. Therefore, the argument of the learned Counsel for the Petitioners that notices issued under Section 13(2) were not served cannot be accepted.

11) Coming to the manner in which the notices under Section 13 (2) were issued, namely, that they were not issued separately to each of the guarantors, it is to be noted neither 13(2) nor Rule 3 prescribe any particular format in issuing the notice. It only states that, (a) demand notice should be served on all borrowers if they are more than one; (b) it shall be delivered either by hand or by transmission to the place where borrower or agent lives; (c) the demand notice may invite attention of the borrower to Section 13(8) of Act, in respect of time available to the borrower to redeem the Asset.

12) A reading of the notice make it clear that all the mandatory conditions stipulated in 13(2) and Rule 3 were complied with. As stated earlier, much comment has been made with regard to sending of notice i.e., not by way of separate notice to borrower and Guarantor. We are not in agreement with the argument advanced by the learned Counsel for the Petitioners on this aspect. A perusal of notice issued under Section 13(2) would reveal that it was addressed to borrower, mortgager and guarantors. While the address of the borrower was mentioned in the first page of the notice, along with names of guarantor and mortgagor, copies of the same were sent separately and individually to borrower and guarantors, by registered post with acknowledgment due,

which were served separately on each one of them. Therefore, it cannot be said that any prejudice is caused to the Writ Petitioners with regard to manner of service of notice under Section 13(2), which cannot be contrary to law.

13) It would be appropriate to extract the relevant portion of 13(2) notice, which is as under:-

“NOTICE UNDER SECTION 13(2) OF ACT 54 OF 2002 FOR ENFORCEMENT OF SECURITY INTEREST

DEMAND NOTICE

Date: 31.03.2021

From:
Chief Manager
Authorized Officer,
UNION BANK OF INDIA under Act 54 of 2002
GUNTUR MAIN BRANCH

To
M/s.Satya Cotton Company,
Prop: M. Sambasiva Rao,
Flat No.403, Satya Yamini Apartment,
3/12, Brodipet,
Guntur – 522 004.

Borrower (s): 1) Mr. Satya Cotton Company Prop:
M. Sambasiva Rao.

Mortgagor (s): 1) Mr. Konniboina Srinivas Rao (2) Mr. Nalluri Satyanarayana, Co-obligant/Guarantor (s): 1) Mr. M. Sambasiva Rao (2) Mr. Konniboina Srinivas Rao (3) Mr. Nalluri Satyanarayana.”

Sir/Madam,

Please take notice that you have availed the following credit facilities from the Union Bank of India, Guntur Main Branch:

Loan A/c. No.	Facility / Loan	Limits	R/L Outstanding as on 31.03.2021	Interest due	Total Dues as on 31.03.2021
33020504 0074133	Cash Credit	95.00	10280353.31	303315.00	10583668.31

xxxxxxx

Copies marked to:

a) borrower – M/s.Satya Cotton Company,
Prop: M. Sambasiva Rao.

b) Mortgagors – 1) Konniboina Sambasiva Rao.
2) Mr. Nalluri Satyanarayana.”

14) In ***L&T Housing Finance Ltd. v. Trishul Developers²***, the Hon’ble Supreme Court while dealing with technical defects raised in issuing notice under Section 13(2), possession notice 13(4) and Section 14, observed in paragraph nos. 19, 20 and 21, as under:

19. In the facts and circumstances, when the action has been taken by the competent authority as per the procedure prescribed by law and the person affected has a knowledge leaving no ambiguity or confusion in initiating proceedings under the provisions of the SARFAESI Act by the secured creditor, in our considered view, such action taken thereof cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the person is able to show any substantial prejudice being caused on account of the procedural lapse as prescribed under the Act or the Rules framed thereunder still with a caveat that it always depends upon the facts of each case to decipher the nature of the procedural lapse being complained of and the resultant prejudice if any, being caused and

² (2020) 10 SCC 659

there cannot be a straitjacket formula which can be uniformly followed in all the transactions.

20. Adverting to facts of the instant case, we are of the view that the objection raised by the respondents was trivial and technical in nature and the appellant (secured creditor) has complied with the procedure prescribed under the SARFAESI Act. At the same time, the objection raised by the respondents in the first instance, at the stage of filing of a Securitisation Application before DRT under the SARFAESI Act is a feeble attempt which has persuaded the Tribunal and the High Court to negate the proceedings initiated by the appellant under the SARFAESI Act, is unsustainable more so, when the respondents are unable to justify the error in the procedure being followed by the appellant (secured creditor) to be complied with in initiating proceedings under the SARFAESI Act.

21. The submission made by the respondent's counsel that the notice under Section 13(2) of the Act was served by the authorised signatory of "L&T Finance Ltd." and that was not the secured creditor in the facts of the case, in our considered view, is wholly without substance for the reason that "L&T Finance Ltd." and "L&T Housing Finance Ltd." are the companies who in their correspondence with all its customers use a common letterhead having their selfsame authorised signatory, as being manifest from the record and it is the seal being put at one stage by the authorised signatory due to some human error of "L&T Finance Ltd." in place of "L&T Housing Finance Ltd.". More so, when it is not the case of the respondents that there was any iota of confusion in their knowledge regarding the action being initiated in the instant case other than the secured creditor under the SARFAESI Act for non-fulfillment of the terms and conditions of the Facility Agreement dated 11th August, 2015 or any substantial

prejudice being caused apart from the technical objection being raised while the demand notice under Section 13(2) was served under the SARFAESI Act or in the proceedings in furtherance thereof no interference by the High Court in its limited scope of judicial review was called for. Consequently, in our view, the judgment of the High Court is unsustainable and deserves to be set aside.”

15) As the objections raised now, in our view do not cause any prejudice to the Petitioners/guarantors, when the plea taken, namely, theft of documents by borrower; non-service of notice issued under Section 13(2) are untenable, we see no grounds to quash the proceedings initiated under Section 13(4) of SARFAESI Act.

16) The Judgment of the Patna High Court in **Syndicate Bank** [cited 1 supra] will not apply to the case on hand. It was a case where the Petitioner in the said case was a borrower and guarantor as well. Notice under Section 13(2) was sent only to borrower and not to the guarantor. This has been found fault with. Further, in the said case, no material has been placed evidencing proof of service and no effort was made by the Bank to find out from postal department as to the status of the registered post. Therefore, the plea of the learned Counsel that judgment of Patna High Court squarely covers the case on hand cannot be accepted.

17) For the aforesaid reasons, we see no merit in the Writ Petitions and the same are liable to be dismissed and, accordingly, they are ***dismissed*** but without any costs.

18) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE V.SUJATHA

Date:12.04.2022

**Note: LR copy to be marked
B/o. SM/MS**

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SMT. JUSTICE V.SUJATHA**

WRIT PETITION No. 30350 OF 2021

AND

WRIT PETITION No. 3334 OF 2022

(Per the Hon'ble Sri Justice C. Praveen Kumar)

**Note: LR copy to be marked
B/o. SM/MS**

DATE:12.04.2022

SM / MS