

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.16775 of 2015

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ORDER: (*Per Hon'ble Sri Justice R. Subhash Reddy*)

This writ petition is filed questioning the order dated 13.04.2015 in I.A.No.7 of 2015 in S.A.No.317 of 2014 passed by the Debts Recovery Tribunal, Visakhapatnam (for short 'the Tribunal').

Respondent Nos.3 to 7 have given security of their properties and obtained loan from respondent Nos.1 and 2 Banks. When respondent Nos.3 and 4 committed default in paying the loan amounts, proceedings were initiated under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Challenging the same, the petitioner, who claims to have a share in the properties held by respondent Nos.3 to 7, approached the Tribunal by filing S.A.No.317 of 2014. In the said appeal, at the first instance, the petitioner has questioned two different proceedings initiated by respondent Nos.1 and 2 Banks. However, when an application was filed for grant of interim relief, the Tribunal has raised an objection as to the maintainability of appeal against two independent proceedings initiated by different Banks. Subsequently, the petitioner has filed a memo not pressing the appeal against the proceedings initiated by the 2nd respondent-State Bank of India, and he confined the appeal against the proceedings initiated by the 1st respondent-Indian Overseas Bank. Thereafter the petitioner filed I.A.No.7 of 2015, seeking stay of all further proceedings initiated by respondent No.1 Bank under Section 13 (4) of SARFAESI Act. By the impugned order dated 13.04.2015, the Tribunal dismissed the

application mainly on the ground that the petitioner has not challenged the earlier orders in I.A.No.892 of 2014 filed for similar relief and that she has already filed a suit in O.S.No.227 of 2014 on the file of the District Judge, Rajahmundry, for partition, and the same is pending.

The petitioner is none other than the daughter of respondent Nos.3 and 4 and sister of respondent Nos.5 and 6. Though she claims that she has a share in the subject properties that are given as security to the respondent Banks, the same has to be decided in O.S.No.227 of 2014 pending on the file of the District Judge, Rajahmundry. The petitioner has not claimed for partition of properties when the properties are given as security, but only when proceedings are initiated under the provisions of the SARFAESI Act and notice under Section 13 (4) of the SARFAESI Act is issued, she filed S.A.No.317 of 2014 before the Tribunal. If the petitioner succeeds in O.S.No.227 of 2014, she can claim appropriate relief, even if the subject properties are sold, by working out the equities on all the properties held by the respondents. But, at the same time, when the properties, which are the subject matter of notice issued under Section 13 (4) of the SARFAESI Act, are given as security to the respondent Banks, on the ground of having a share, the petitioner cannot be permitted to stall the proceedings at this point of time. In that view of the matter, we do not find any illegality in the impugned order passed by the Tribunal, so as to interfere with the same under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

15.06.2015

v v