

THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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WRIT PETITION No.36189 OF 2015
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ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed seeking to set aside the e-auction sale notice, dated 30.09.2015, issued in respect of ground floor of shop bearing M.No.15-7-430/1/14 (portion of M.Nos.15-7-430 and 15-7-430/1) having plinth area of 150 Square Feet situated at Begum Bazar, Hyderabad.

The 2nd respondent has availed cash credit facility from the 1st respondent – Bank by mortgaging the property in question and defaulted in repaying the same. Therefore, the 1st respondent – Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and issued the impugned auction notice, dated 30.09.2015.

It is the case of the petitioner that the property in question belongs to her mother and the husband of the 2nd respondent is none other than her brother and that a Suit for partition is filed in O.S.No.2323 of 2015 before the III Junior Civil Judge, City Civil Court, Hyderabad, and the same is pending consideration.

In this Writ Petition, mainly, it is the grievance of the petitioner that when there is a claim for partition, the 1st respondent – Bank

ought not to have proceeded with the auction to recover the amount due by the 2nd respondent by initiating proceedings under the Act.

Whether the petitioner is having any share in the property in question or not is a factual dispute, which cannot be resolved in this Writ Petition. If the petitioner is aggrieved of the securitisation proceedings or the auction conducted on 07.11.2015 pursuant to the impugned auction notice, dated 30.09.2015, there is an effective alternative remedy available to her to approach the Debts Recovery Tribunal under Section 17 of the Act. Hence, we do not find any reason to entertain this Writ Petition.

Accordingly, the Writ Petition is dismissed leaving it open to the petitioner to avail any other remedy available under law. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

November 12, 2015

MD