

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

WRIT PETITION No.27051 of 2015

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

This writ petition is filed for a Mandamus to set aside the sale notice, dated 13.07.2015, issued under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') for sale of the secured asset i.e., house bearing No.1-7-630/18/1 (Ground Floor) situated at Gemini Colony, Ram Nagar, Hyderabad.

The petitioner has borrowed an amount of Rs.25,35,000/- from the respondent Finance Company and when he committed default in repayment of the same, the respondent Company has initiated proceedings under the Securitisation Act. After issuing demand notice, when possession notice was issued under Section 13 (4) of the Securitisation Act, the petitioner has questioned the same by filing S.A.No.472 of 2014 before the Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal'). By order dated 09.07.2014, the Tribunal has passed conditional interim order of stay on condition of the petitioner depositing a sum of Rs.5,00,000/- in two spells of Rs.2,50,000/- each. On the ground that the petitioner has not complied with the said condition, the respondent Company has further proceeded and issued the impugned sale notice dated 13.07.2015, fixing the date of auction as 27.08.2015.

In this writ petition, it is the main case of the petitioner that before issuance of the impugned sale notice, he was not served with any notice as contemplated under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 framed under the Securitisation Act.

On the other hand, it is the case of the respondent that when the possession notice was issued, the petitioner has already approached the Tribunal by filing S.A.No.472 of 2014 and the same is pending consideration. It is also stated that without disclosing the pendency of S.A.No.472 of 2014 filed before the Tribunal, the present writ petition is filed. It is further submitted that the secured asset of the petitioner was already sold in the auction held on 27.08.2015 for an amount of Rs.33,10,000/- and sale certificate was also issued to the auction purchaser. It is also submitted that as the auction purchaser is not impleaded as party respondent to the present writ petition, the petitioner is not entitled for any relief.

In this case, it is not in dispute that when possession notice was issued, the petitioner has approached the Tribunal by filing Securitisation Application and the same is pending consideration. When the petitioner has not complied with the conditional interim order passed by the Tribunal, the respondent Company has proceeded further and issued the impugned sale notice. Pursuant to the impugned sale notice, auction was conducted on 27.08.2015 and sale certificate is also stated to have been issued to the third party auction purchaser, who purchased the secured asset of the petitioner for an amount of Rs.33,10,000/-. The auction purchaser is not

impleaded as party respondent. In view of the pendency of S.A.No.472 of 2014 filed before the Tribunal, if the petitioner is aggrieved of the consequential steps taken by the respondent Company by issuing sale notice and by selling the secured asset in the auction on 27.08.2015, he can as well take suitable steps for impleadment of necessary parties in the pending S.A., but at the same time, as the auction purchaser is not impleaded as party respondent to this writ petition, this Court is not inclined to consider the request of the petitioner for grant of any relief.

Accordingly, the writ petition is dismissed, granting liberty to the petitioner to take appropriate steps in S.A.No.472 of 2014 pending before the Tribunal.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

26.10.2015

v v