

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

WRIT PETITION No.21797 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the auction conducted by the 1st respondent-Bank on 02.06.2015 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") and consequently declare all proceedings of the 1st respondent-Bank as null and void in respect of the residential properties bearing M.No.16-2-752/K/42, admeasuring 299 square yards, and M.No.16-2-752/K/62, admeasuring 266 square yards, respectively, situated in Sy.Nos.48, 50, 55/1, Sai Ganga Colony, Sankeshwar Bazar, Saidabad Village and Mandal, Hyderabad.

2. Respondent Nos.2 and 3 have availed loan facility from the 1st respondent-Bank by mortgaging the aforesaid properties. As respondent Nos.2 and 3 have defaulted in repaying the loan amount, their loan account was declared as Non-Performing Asset (NPA) and the 1st respondent-Bank has initiated proceedings under the provisions of the SARFAESI Act to sell the aforesaid secured assets. After issuing necessary demand notice dated 01.08.2013 and possession notice dated 18.02.2014, auction was conducted on 02.06.2015. At that stage, the petitioner, who is the sister of the 3rd respondent, has filed this writ petition for the aforesaid

relief, mainly on the ground that she is entitled for partition of the secured assets and in the suit being O.S.No.498 of 2015 filed by her on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, for partition and separate possession of the very same properties, there is interim order of *status quo* vide order dated 03.07.2015 in I.A.No.1791 of 2015 in O.S.No.498 of 2015 and the suit is pending consideration.

3. A counter affidavit is filed on behalf of the 1st respondent-Bank. While denying various allegations in the writ petition, it is stated that the auction was conducted with regard to the house property bearing M.No.16-2-752/K/42, admeasuring 299 square yards and an amount of Rs.27,00,000/- was paid by the successful bidder and the sale was not confirmed, since an amount of Rs.30,00,000/- was due and payable by the successful bidder. It is further stated that in respect of the other property bearing M.No.16-2-752/K/62, admeasuring 266 square yards, auction is yet to be conducted. It is also stated that the 4th respondent is the original allottee of the said properties by the State Government vide orders issued in G.O.Ms.No.45, dated 16.01.2009, who inturn, executed a registered Gift Deed dated 04.12.2010 in favour of the 3rd respondent, conveying both the house properties. It is further stated that the claim of the petitioner is false and without any basis and that the petitioner has no manner of title or interest over the mortgaged property.

4. Heard Sri K.V. Seshagiri Rao, learned counsel for the petitioner, as well as Sri K. Mallikarjuna Rao, learned Standing Counsel for the 1st respondent-Bank and perused the material

on record.

5. It is to be noticed that originally, the husband of the 4th respondent has been allotted the aforesaid land, on which constructions were made and both the house properties were transferred by way of Gift Deed in favour of the 3rd respondent. The husband of the 3rd respondent is the Managing Director of the 2nd respondent-Company. It is not in dispute that the said properties were mortgaged to the 1st respondent-Bank to secure the loan availed by respondent Nos.2 and 3. In the suit being O.S.No.498 of 2015 filed by the petitioner, the 1st respondent-Bank is not a party. Therefore, any orders passed in the said suit, are not binding on the 1st respondent-Bank. In the securitization proceedings, except the vague allegation of claim and interest by way of partition in respect of the said property, there is no material placed before this Court by the petitioner in support of her claim. It is also not in dispute that originally the subject plot was allotted to the husband of the 4th respondent, and the 4th respondent has transferred the said plot by way of Gift Deed in favour of the 3rd respondent, who is her daughter. At no point of time, the petitioner made any claim with regard to the subject properties, but only when proceedings were initiated under the provisions of the SARFAESI Act in the year 2015, the present suit in O.S.No.498 of 2015 was filed for partition and separate possession of the suit schedule properties only to defeat the right of the 1st respondent-Bank on the said property. With regard to the claim of the petitioner over the subject property,

in the absence of any documentary evidence to that effect, it is not possible to record any finding for partition of the subject property. While it is open to the petitioner to workout her remedies before the competent Court, prima-facie, we are of the view that the petitioner has not placed any material to interdict the securitization proceedings initiated by the 1st respondent-Bank to sell the mortgaged properties for realization of the loan amount availed by respondent Nos.2 and 3.

6. For the aforesaid reasons, this writ petition is devoid of merits and is accordingly dismissed, at the admission stage. It is open to the 1st respondent-Bank to take steps for realization of the loan amount, in accordance with law. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

25.08.2015.

Msr

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