

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

WRIT PETITION No.40583 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the impugned e-Auction Sale Notice dated 12.11.2015 fixing the date of auction on 16.12.2015 by the respondent-Bank in respect of the petitioner's property bearing House No.5-5-670/10, 7, 14 of Municipal No.5-5-667, 668 and 669 of Malakunta Road, Gosha Mahal, Hyderabad, as arbitrary, illegal and against the principles of natural justice and, consequently, sought a direction to the Debts Recovery Tribunal, Hyderabad, to pass orders in S.A.No.488 of 2015 on merits.

2. Petitioner is the guarantor for the loan availed by respondent No.3-borrower from the respondent-Bank. As respondent No.3-borrower has defaulted in repayment of the loan amount, the respondent-Bank has initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the SARFAESI Act') and issued e-Auction Sale Notice dated 12.11.2015 fixing the date of auction on 16.12.2015 in respect of the petitioner's property bearing House No.5-5-670/10, 7, 14 of Municipal No.5-5-667, 668 and 669 of Malakunta Road, Gosha Mahal, Hyderabad, in exercise of powers conferred under Rules 8(6) and (9) of the Security

Interest (Enforcement) Rules, 2002 (for brevity “the Rules”).

As per the said Sale Notice, the 3rd respondent-borrower is due an amount of Rs.21,59,351/- as on 26.02.2008 along with further interest with effect from 27.02.2008.

3. Sri D. Raghavulu, learned counsel for the petitioner, submits that the impugned e-Auction Sale Notice is issued in violation of the mandatory procedure prescribed under the Rules. The learned counsel would further contend that an application for amendment of the prayer in S.A.No.488 of 2015 is also pending consideration before the Tribunal.

4. On the other hand, Sri Deepak Bhattacharjee, learned Standing Counsel for the respondent-Bank, submits that when possession notice under Section 13(4) of the SARFAESI Act was issued to the petitioner on 02.11.2015, challenging the said notice, the petitioner has filed S.A.No.488 of 2015 before the Debts Recovery Tribunal, Hyderabad, under Section 17 of the SARFAESI Act. After hearing the matter, when the Tribunal has declined to grant any interim orders in S.A.No.488 of 2015, the petitioner has filed the present writ petition.

5. Heard learned counsel for the parties and perused the material on record.

6. In view of the pendency of S.A.No.488 of 2015 before the Debts Recovery Tribunal, Hyderabad, we are not inclined to go into the merits of the matter. *Prima facie*, we are of the view that the respondent-Bank has followed the Rules by giving thirty days time while fixing the date of auction to be held on 16.11.2015 by publication of e-Auction Sale Notice in the Newspapers. In any event, having regard

to the pendency of S.A.No.488 of 2015 before the Debts Recovery Tribunal, Hyderabad, we are not inclined to grant the relief sought for in this writ petition. However, it is open to the Debts Recovery Tribunal, Hyderabad, to examine the claim made by the petitioner with regard to violation of the Rules in issuing the impugned e-Auction Sale Notice dated 12.11.2015 and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of six months from today.

7. Subject to the above directions, this writ petition is disposed of, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE M. SATYANARAYANA

MURTHY
15.12.2015.
Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
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Msr