

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

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WRIT PETITION No.36240 OF 2015
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ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed seeking to declare the action of respondent No.1 in taking steps to dispossess the petitioner from the residential house bearing No.4-1-95 and 100 (new No.4-1-106), ground and first floor, Ward No.4, Block No.1, Hatai Street, near Masjid-E-Islamia, Nizamabad, as illegal and arbitrary.

The petitioner has availed cash credit facility of Rs.18,00,000/- from respondent No.1 – Bank by giving the property in question as security and has 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 (for short, 'the Act') and after issuing Demand Notice and Possession Notice, issued e-auction sale notice on 26.12.2014 showing the secured debt as Rs.23,65,423/- as on that date.

It is submitted by the learned counsel for petitioner that aggrieved by the steps taken by the 1st respondent – Bank under the Act, petitioner has filed an appeal under Section 17 of the Act before the 2nd respondent - Debts Recovery Tribunal on 21.01.2015 along with an Interlocutory Application to stay all further proceedings pursuant to the e-auction sale notice, dated 26.12.2014, but no orders are passed in the I.A.. It is further submitted that before issuing e-auction notice, dated 26.12.2014, petitioner was not served with

Possession Notice as per the procedure contemplated under law. It is further submitted that the 1st respondent – Bank is taking steps to dispossess the petitioner from the property in question without following the procedure contemplated under law.

In view of the pendency of appeal before the 2nd respondent, it is not necessary to go into the merits of the matter at this stage, but as it is not in dispute that the petitioner has availed cash credit facility by mortgaging the property in question, we deem it appropriate to dispose of the Writ Petition by directing the 1st respondent – Bank not to take any coercive steps to dispossess the petitioner from the property in question on condition of petitioner depositing Rs.11.50 lakhs in two instalments. The first installment amount of Rs.5.75 lakhs shall be deposited within a period of six weeks from today and the second installment amount of Rs.5.75 lakhs shall be deposited within a period of six weeks thereafter. The amounts deposited shall be subject to further orders to be passed in the appeal pending before the 2nd respondent. It is made clear that if the petitioner fails to deposit the aforesaid amounts within the time stipulated, it is open to the 1st respondent – Bank to take further steps without reference to pendency of appeal before the 2nd respondent.

Subject to the above, the Writ Petition is disposed of. 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