

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

WRIT PETITION No.23420 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare e-Auction notice dated 20.07.2015 issued by the 1st respondent-Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"), as illegal and unconstitutional.

2. The 2nd respondent has obtained loan from the 1st respondent-Bank by mortgaging the shop bearing M.No.2-2-153/1 (old No.66), James Street, admeasuring 200 square feet situated at M.G. Road, Secunderabad, which was given on lease to the petitioner. As the 2nd respondent defaulted in repayment of the loan amount, his loan account was declared as NPA and proceedings were initiated under the provisions of the SARFAESI Act by issuing the impugned e-Auction notice dated 20.07.2015 proposing to sell the subject property in the auction being conducted on 27.08.2015.

3. The petitioner, who claims tenancy over the subject property, has questioned the said e-Auction notice mainly on the ground that he is a tenant/lessee of the 2nd respondent from 2008 onwards and also deposited an amount of

Rs.2,00,000/- towards interest free refundable security deposit. It is pleaded that when the petitioner, being a lessee of the subject property, is entitled to a notice, without giving any notice and opportunity, the subject property is sought to be sold by way of auction.

4. Learned counsel for the petitioner has placed reliance on a judgment of the Apex Court in the case of HARSHAD GOVARDHAN SONDAGAR vs. INTERNATIONAL ASSETS RECONSTRUCTION CO.LTD.^[1].

5. In this case, it is not in dispute that the 2nd respondent has mortgaged the subject property in favour of the 1st respondent-Bank for the loan obtained by him in the year 2012. Though the petitioner claims possession over the subject property by virtue of a lease granted by the 2nd respondent, there is no valid registered lease deed entered between himself and the 2nd respondent in respect of the subject property. In the absence of any valid registered lease deed, the aforesaid judgment relied upon by the learned counsel for petitioner also dealt with the cases where there is no valid lease deed, the lessees are not entitled for the relief sought for. Therefore, the judgment of the Apex Court in the case of HARSHAD GOVARDHAN SONDAGAR (supra) would not render any assistance to the case of the petitioner.

6. For the aforesaid reasons, we do not find any merit to grant the relief sought for in this writ petition to invalidate the e-

Auction notice dated 20.7.2015.

7. Accordingly, this writ petition is dismissed, at the admission stage. However, as the petitioner claims possession over the subject property as a lessee from 2008 onwards and requires some time to secure alternate accommodation, we direct that both the parties shall maintain *status quo* with regard to the possession over the subject property for a period of six weeks from today. It is made clear that the 1st respondent-Bank can proceed pursuant to e-Auction notice dated 20.7.2015 and take further steps 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

29.07.2015.

Msr

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[\[1\]](#) (2014) 6 SCC 1