

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

WRIT PETITION Nos.39822 AND 40103 OF 2015

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

As both these Writ Petitions are filed questioning the Tender – cum - Auction Sale Notice, dated 06.11.2015, issued by respondent Nos.1 and 2 in exercise of powers conferred under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), they are heard together and are being disposed of by this common order.

Respondent No.3, claiming to be the owner of the property in question, has mortgaged such property to respondent Nos.1 and 2 and availed loan. As he defaulted in repaying the loan amount, respondent Nos.1 and 2 have initiated proceedings under the Act and after issuing Demand Notice and Possession Notice under Sections 13 (2) and 13 (4) of the Act, they have issued the impugned notice showing the liability of respondent No.3 as Rs.5,40,71,280.46 paise.

On the other hand, the petitioners in W.P.No.39822 of 2015 also claim ownership over the property in question based on Memorandum of Understanding - cum – Undertaking (MOU), dated 03.07.2012, agreement of

sale, dated 20.07.2012, and decree of the civil Court, by which respondent No.3 was directed to execute a registered sale deed in favour of the petitioners in respect of the property in question. Further, it is the case of the petitioners that in view of the right and title acquired by them, it is not open to respondent Nos.1 and 2 to issue the impugned notice to sell the property in question, which is in their possession.

Similarly, the petitioners in W.P.No.40103 of 2015 also claim that the property, which is subject matter of the impugned notice, has fallen to their share pursuant to the decree, dated 06.08.2002, passed in O.S.No.23 of 2001 by the I Senior Civil Judge, Ranga Reddy District.

The agreement of sale and MOU are unregistered. The impugned notice is dated 06.11.2015 and the auction is scheduled to be held tomorrow i.e., 10.12.2015, but in view of the factual disputes raised by the petitioners and in view of the effective alternative remedy available to the petitioners under Section 17 of the Act, we find no reason to entertain these Writ Petitions directly.

Hence, we dismiss the Writ Petitions granting liberty to the petitioners to approach the Debts Recovery Tribunal under Section 17 of the Act. However, as it is represented that it will take some time to obtain appropriate orders from the Debts Recovery Tribunal, we

direct the respondent - Bank that in the event of selling the property in question pursuant to the impugned notice, Sale Certificate shall not be issued to the third party auction purchaser for a period of three weeks from today.

It is made clear that in the event of filing any application by the petitioners in both the Writ Petitions, it is open to the Debts Recovery Tribunal to consider the same independently uninfluenced by any of the observations or findings recorded by this Court in these Writ Petitions.

Further, it is submitted by the learned counsel for petitioners in W.P.No.39822 of 2015 that pursuant to the orders passed under Section 14 of the Act, Advocate Commissioner has taken possession of the property in question and locked the premises without giving any opportunity to the petitioners to remove the movables belonging to them. If that be so, petitioners are permitted to make a representation to respondent Nos.1 and 2 and on such representation, respondent Nos.1 and 2 shall examine whether there are any movables belonging to the petitioners inside the property in question and in such an event, suitable steps be taken to permit the petitioners to remove the same.

Miscellaneous Petitions, if any, pending in these Writ Petitions, shall stand closed. No costs.

**R. SUBHASH
REDDY, J**

**A. SHANKAR
NARAYANA, J**

December 09, 2015
MD