

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

WRIT PETITION No.40899 of 2015

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

This writ petition is filed questioning the sale notice, dated -Nil-, which was published in the newspapers on 15.11.2015, to sell the secured asset covered by H.No.5-570/10C in Plot No.10C in Sy.Nos.35, 36 and 37 admeasuring 285 sq. yards situated at Jonnabanda, Old Alwal, Secunderabad.

The 2nd respondent is the borrower of money from the 1st respondent Bank by mortgaging the house property, which is being claimed by the petitioner. In view of the default committed in repayment of loan amount by the 2nd respondent, the 1st respondent Bank has initiated proceedings under the SARFAESI Act. The petitioner claims that he has purchased the secured asset from the 2nd respondent and the 2nd respondent has already filed a suit in O.S.No.313 of 2014 on the file of the XVI Additional District and Sessions Judge, Ranga Reddy District, seeking the relief of cancellation of sale deed executed in favour of the petitioner, and the same is pending. In the said suit, the 2nd respondent has also filed I.A.No.72 of 2014 and obtained orders of *status quo*. The Bank is not a party in the said suit. Earlier when the 1st respondent – Bank has initiated measures to take possession

of the secured asset by obtaining orders under Section 14 of the SARFAESI Act, the petitioner has filed W.P.No.6641 of 2015, questioning such action and also the possession notice issued under Section 13 (4) of the SARFAESI Act. Further, questioning the measures taken under the SARFAESI Act, the 2nd respondent/borrower has already filed S.A.No.478 of 2014 before the Debts Recovery Tribunal, Hyderabad and the same is pending. Though the petitioner is one of the defendants in O.S.No.313 of 2014, he did not disclose the pendency of such suit in the earlier writ petition. By recording a finding that the petitioners in the said writ petition have not approached this Court with clean hands, the earlier writ petition was dismissed with a direction to the Bank to refund the amount deposited by the petitioners therein.

Thereafter the 1st respondent – Bank has issued the impugned e-auction notice, which is published in the newspapers on 15.11.2015. Questioning the said auction notice, fixing the date of auction as 18.12.2015, this writ petition is filed.

In this writ petition, it is submitted that though the petitioner has filed Securitisation Application before the Tribunal, no orders are passed therein and the respondent – Bank is proceeding with the auction. It is also submitted that if auction is allowed to go on, third party's rights will come into picture.

In this case, it is not in dispute that the property claimed

by the petitioner was mortgaged prior to his claim of purchase by registered sale deed. In view of the prior mortgage in favour of the 1st respondent – Bank, we do not find any illegality in proceeding with the Securitisation proceedings. Moreover, the 2nd respondent has filed a suit for cancellation of sale deed, basing on which the petitioner is claiming the property, and the same is pending. Apart from this, the 2nd respondent has also filed S.A.No.478 of 2014 questioning the proceedings initiated under the SARFAESI Act. In that view of the matter, if the petitioner succeeds in the said S.A, he can get back the property, but in view of the earlier order passed by this Court in W.P.No.6641 of 2015 and in view of the pendency of S.A.No.478 of 2014 and also considering the fact that the property was mortgaged to the 1st respondent – Bank by the 2nd respondent earlier to the purchase claimed by the petitioner, we do not find any merit in this writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

