THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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<u>WRIT PETITION No.6641 OF 2015</u>

<u>ORDER</u>: (Per Hon'ble Sri Justice A. Shankar Narayana)

The instant Writ Petition is filed challenging the measures taken by the respondent – Bank, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), pursuant to the order, dated 25.07.2014, passed in Crl.MP.No.684 of 2014 on the file of Chief Metropolitan Magistrate, Cyberabad, L.B. Nagar, as being illegal, arbitrary and unconstitutional.

The facts in brief are that the petitioners claim that they purchased the secured asset, which was mortgaged by respondent No.3 in favour of the respondent – Bank for the loan obtained by him, by paying consideration of Rs.59,80,000/- under registered sale deed, dated 26.07.2012, and as respondent No.3 failed to discharge the loan amount, the respondent – Bank initiated measures under the Act and in the process of measures taken against respondent No.3 by the respondent – Bank, the order under challenge was passed by the Chief Metropolitan Magistrate under Section 14 of the Act and an Advocate Commissioner was appointed to take possession of the secured asset. It is not in dispute that the secured asset was mortgaged by respondent No.3 even prior to the sale in favour of the petitioners, but the petitioners claim that respondent No.3 has suppressed the fact of mortgaging the property in favour of the respondent – Bank. It is clear from the record that respondent No.3 has approached the Debts Recovery Tribunal, Hyderabad, by filing S.A.No.478 of 2014 and also I.A.No.2635 of 2014 seeking stay of all further proceedings pursuant to the Possession Notice issued by the respondent – Bank.

The respondent – Bank has filed counter raising various pleas and strongly contended that the mortgage in its favour was prior to the sale said to have been made by respondent No.3 in favour of the petitioners. It is also stated that the account of respondent No.3 is classified as 'NPA' and it has taken measures under Section 13 (2) of the Act followed by Section 13 (4) Notice and since there was resistance for taking possession, it initiated measures under Section 14 of the Act and obtained order for taking over possession of the secured asset. It is also stated that respondent No.3 filed S.A.No.741 of 2014 prior to filing S.A.No.478 of 2014 and fraudulently obtained stay of all further proceedings in enforcement of security interest. The Debts Recovery Tribunal, having noticed certain facts, dismissed S.A.No.741 of 2014. Lastly, it is contended that the petitioners ought to have invoked the provisions of Section 17 of the Act and approached the Debts Recovery Tribunal and instead of availing the efficacious remedy available under the provisions of the Act, they approached this Court by way of this Writ Petition, which is not maintainable.

Heard Sri I. Rama Rao, learned counsel for the petitioners; Sri B.S. Prasad, learned counsel for respondent Nos.1 and 2 and Sri D. Kanaka Sundar, learned counsel for respondent No.3.

Initially, this Court, by order, dated 07.07.2015, granted stay of auction of the notified property on condition of petitioners depositing half of the amount due in the loan account standing in the name of respondent No.3 within a period of two weeks. The said order was complied with by the petitioners. Later, during the course of arguments, it came to light that respondent No.3 has also filed O.S.No.313 of 2014 before the XVI Additional District and Sessions Judge, R.R. District at Malkajgiri, seeking relief of cancellation of sale deed executed in favour of the petitioners and has also filed I.A.No.72 of 2014 in which he obtained *status quo* orders. The petitioners herein were shown as defendant Nos.1 and 2 therein and the learned counsel for petitioners fairly concedes that the petitioners were aware of filing of Suit in O.S.No.313 of 2014 against them, but however it is clear that filing of the said Suit is not finding place in the affidavit filed by the petitioners in the instant Writ Petition. That has been the reason, this Court granted interim stay on condition of depositing half of the amount. Had the petitioners brought to the notice of this Court about the pendency of the said Suit, certainly, this Court would not have passed such an order.

It is not in dispute that S.A.No.478 of 2014 is pending on the file of Debts Recovery Tribunal, Hyderabad, and even respondent No.3, who filed the said appeal, stated that it is still pending before the Debts Recovery Tribunal and the conditional order passed by the Debts Recovery Tribunal therein was not complied with. In such an event, we are of the considered view, that the petitioners ought to have approached the Debts Recovery Tribunal. This Court cannot probe into the fraud and other aspects relating to fraud put-forth by respondent No.3, more particularly when civil suit is pending, as referred to above, where respondent No.3 sought for cancellation of the sale deed executed in favour of the petitioners. Hence, we are of the view that the petitioners have not approached this Court with clean hands in seeking the relief of Mandamus and the only remedy available to them is to approach the Debts Recovery Tribunal ventilating their grievance.

Since the petitioners have complied with the condition imposed by this Court by depositing half of the amount, we deem it appropriate to direct respondent No.2 – Bank to refund the amount deposited by the petitioners, but, however, without any interest.

Accordingly, the instant Writ Petition is dismissed as we do not find any merit in it. However, the petitioners are at liberty to approach the Debts Recovery Tribunal for availing the remedy, if any. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 14, 2015

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