

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

WRIT PETITION No.38596 of 2015

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

The petitioner has filed this writ petition seeking *Mandamus* declaring the action of respondent Nos.1 and 2 in initiating proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") against the property viz., Terraced house building (G+1) in an extent of 280.25 square yards (Gramakantham) in R.S.No.26/1NN of 2nd Ward, Ubalanka Village of Ravulapalem Mandal, East Godavari District, in pursuance of the loan A/c.No.047030100050932 of the 3rd respondent pending disposal of the suit in O.S.No.10 of 2015 on the file of the II Additional District Judge, Amalapuram, as arbitrary and illegal.

2 . The 3rd respondent, who is the owner of the aforesaid property, has borrowed certain loan amount vide loan A/c.No.047030100050932 from the 2nd respondent-Bank. As she defaulted in repayment of the said loan amount, earlier when proceedings were initiated under the provisions of the SARFAESI Act for sale of the aforesaid property, the petitioner, who claims to be an unregistered agreement of sale holder executed by the 3rd respondent in respect of the said property, filed W.P.No.18817 of 2015, wherein the 2nd respondent Bank has filed counter affidavit stating that the 3rd respondent has deposited an amount of Rs.98,000/- towards defaulted instalments and her account was

upgraded to performing asset and the liability was brought down to Rs.8,79,243/- by 25.06.2015. Basing on the said counter affidavit, the said writ petition was disposed of by order dated 06.08.2015, directing respondent Nos.1 and 2 therein to return the amount paid by the petitioner by way of demand draft, with an observation to work out the remedies available to the petitioner in the suit in O.S.No.10 of 2015 on the file of the II Additional District Judge, Amalapuram, said to have been filed by him against the 3rd respondent for specific performance of the agreement of sale.

3. In this writ petition, the petitioner has questioned the further sale notice dated 03.10.2015 issued by the 2nd respondent-Bank under Section 13(2) of the SARFAESI Act.

4. Learned counsel for the petitioner contends that the petitioner is an unregistered agreement of sale holder executed by the 3rd respondent in respect of the aforesaid property and the suit filed by him for specific performance of the agreement of sale is pending consideration and if the Securitisation proceedings are allowed to go on, at this stage, he will be put to irreparable loss and injury.

5. From a perusal of the provision under sub-Section (3A) of Section 13 of the SARFAESI Act, it is clear that on receipt of demand notice under Section 13(2), if the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection, the reasons for non-acceptance of the representation or objection to the borrower.

6. The petitioner, who is a third party purchaser of the subject property based on an unregistered agreement of sale, cannot question the demand notice issued to the 3rd respondent under Section 13(2) of the SARFAESI Act. With regard to his rights, if any, over the subject property, the petitioner has to pursue the same in

civil proceedings pending in O.S.No.10 of 2015 on the file of the II Additional District Judge, Amalapuram. At the instance of the petitioner, no interference is called for in this writ petition, at this stage.

7. Accordingly, this writ petition is dismissed, at the admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

27.11.2015.

Msr

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