

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

WRIT PETITION No.15085 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* declaring the action of the 1st respondent-Bank in proceeding with the auction of the properties of the petitioner on 29.4.2015 pursuant to the e-Auction Sale/Sale Notification dated 25.3.2015 inspite of the restoration of S.A.No.205 of 2013, vide order dated 17.4.2015 in M.A.No.43 of 2014, as arbitrary and illegal.

2. The 2nd respondent, which is a Private Limited Company, incorporated under the Companies Act, 1956 has obtained certain loan amount from the 1st respondent-Bank. As the petitioner is one of the Directors of the 2nd respondent Company, his properties were also given as a security for the loan obtained by the 2nd respondent Company. When the loan amounts were not repaid, the 1st respondent-Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act") and issued e-Auction Sale Notice dated 19.7.2013. The petitioner has challenged the said notice by way of appeal in S.A.No.205 of 2013 under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Visakhapatnam (for brevity "the Tribunal"). The Tribunal, at the first instance, has passed interim order dated 3.9.2013, granting stay of all further proceedings pursuant to the auction notice dated 19.7.2013. Subsequently, when the said appeal was dismissed for

non-prosecution on 7.4.2015, on an application in M.A.No.43 of 2014 filed by the petitioner, it was restored to file by order dated 17.4.2015.

3. In this writ petition, the main grievance of the petitioner is that inspite of the order dated 17.4.2015 in M.A.No.43 of 2014 restoring the appeal to file, the 1st respondent-Bank has proceeded with the auction.

4. Counter affidavit is filed by the 1st respondent-Bank disputing several averments made by the petitioner and stated that auction was not conducted as per e-Auction Sale Notice dated 19.7.2013. It is stated that further sale notice was issued on 25.3.2015, pursuant to which auction was conducted on 29.4.2015 and sale certificate was issued to the third party auction purchaser and possession was also given to him. It is further stated that in this writ petition, the third party auction purchaser has not made a party-respondent and without impleading the said purchaser, the writ petition is filed to declare auction of the properties on 29.4.2015 pursuant to the sale notice dated 25.3.2015 as arbitrary and illegal.

5. Heard learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent-Bank.

6. It is to be noticed that the petitioner has filed S.A.No.205 of 2013 before the Tribunal challenging the sale notice dated 19.7.2013. However, Sale Notice dated 25.3.2015 was not the subject matter of appeal before the Tribunal, at any point of time. Even assuming that the default order dated 7.4.2014 was set aside and the appeal is restored to file, the petitioner is not entitled for the relief sought for in this writ petition for more than one reason. *Firstly*, the petitioner has neither challenged the sale notice dated 25.3.2015, nor the auction conducted on 29.4.2015 and, *secondly*; as the auction is not conducted pursuant to the earlier sale notice dated 19.7.2013, the very S.A.No.205 of 2013 has become infructuous. In any event, if the auction is conducted without following the procedure pursuant to the Sale Notice dated 25.3.2015, it is always open for the

petitioner to challenge the same under the provisions of Section 17 of the SARFAESI Act before the Tribunal, by impleading the auction purchaser as a party-respondent. Therefore, we are not inclined to grant the relief sought for in the writ petition, moreso when the third party auction purchaser is not before us.

7. For the aforesaid reasons, this writ petition is dismissed, at the admission stage. However, liberty is given to the petitioner to pursue his remedy before the Debts Recovery Tribunal, Visakhapatnam, 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

05.06.2015.

NOTE: Issue C.C. in three days.

(B/O)

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

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