

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

WRIT PETITION No.27242 OF 2015

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

This Writ Petition is filed seeking to declare the action of respondent Nos.1 and 2 in seizing possession and auctioning the house property bearing No.85, Old Mudfort, Secunderabad, belonging to the petitioners for the purported dues of respondent Nos.3 and 4 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), as illegal and arbitrary.

Respondent Nos.3 and 4 have availed loan facility from respondent No.1 – Bank by mortgaging the property in question. As respondent Nos.3 and 4 have defaulted in repaying the loan amount, respondent No.1 – Bank has initiated proceedings under the Act and in spite of issuing Demand Notice and Possession Notice under Section 13 (2) and 13 (4) of the Act, respectively, as they have not paid the amount due, the Bank has obtained orders from the Magistrate under Section 14 of the Act to take possession of the secured asset. It is stated that when respondent No.1 – Bank is trying to take possession of the property in question by dispossessing the petitioners

therefrom, they filed the present Writ Petition.

It is the case of the petitioners that as respondent Nos.3 and 4 have deceitfully obtained sale deed from the petitioners with regard to the property in question, they have questioned the same by filing a Suit in O.S.No.104 of 2010 before the I Additional Chief Judge, City Civil Court, Secunderabad, seeking cancellation of the sale deed and as such, the action of respondent Nos.1 and 2 in trying to seize the property in question is illegal.

Though the petitioners have filed O.S.No.104 of 2010, impleading Union Bank of India as a party defendant, no interim orders are passed therein. Further, if the petitioners are aggrieved of any of the action of respondent No.1 - Bank initiated under the Act, there is a remedy by way of filing an application under Section 17 of the Act before the Debts Recovery Tribunal and in spite of the same, the petitioners have not availed such remedy.

In that view of the matter, without going into the merits of the case, in view of the availability of alternative remedy by way of filing an application under Section 17 of the Act, we dismiss the Writ Petition at the stage of admission. However, liberty is granted to the petitioners to approach the Debts Recovery Tribunal. Further, the

respondents are directed to maintain *status quo* as on today with regard to the possession of the property in question for a period of two (2) weeks from today. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

R. SUBHASH

REDDY, J

A. SHANKAR

NARAYANA, J
August 26, 2015
MD