

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

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WRIT PETITION No.30551 OF 2015

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

This Writ Petition is filed questioning the e-auction notice, dated 19.08.2015, issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') for sale of the property bearing Door No.58-25-62 admeasuring 206 Square Yards covered by Survey No.52 situated at Reddyveedhi, Butchirajupalem Village, Greater Visakhapatnam Municipal Corporation.

Petitioner is the father of the 3rd respondent, who has mortgaged the property in question in favour of 1st and 2nd respondents as security for the loan extended to the third party – borrower. As the borrower committed default in repaying the loan amount, the 1st and 2nd respondents have initiated proceedings under the Act and after issuing necessary Demand Notice, notices were issued for taking possession of the property in question. Aggrieved by the same, petitioner has filed S.A.Nos.63 of 2013 and 56 of 2015 before the Debts Recovery Tribunal. During pendency of the same, as e-auction notice, dated 31.05.2015, was issued, the petitioner has withdrawn the aforesaid S.As. and has filed S.A.No.180 of 2015, which is stated to be posted to 28.09.2015. In the meanwhile, the impugned e-auction notice, dated 19.08.2015, is issued.

It is the case of the petitioner that when the Suit filed by him for cancellation of the gift deed executed in favour of the 3rd respondent is pending consideration in O.S.No.158 of 2010 on the file of VII Additional District Judge, Visakhapatnam, it is not open to the 1st and

2nd respondents to proceed with the sale of the property in question.

It is not in dispute that a gift deed is executed in favour of the 3rd respondent, who is none other than the son of the petitioner, in respect of the property in question and he has mortgaged the same to the 1st and 2nd respondents. Merely on the ground that the Suit filed for cancellation of the said gift deed is pending consideration, the petitioner cannot question the impugned notice, even without making the original borrower as party respondent to the Writ Petition. Further, from a perusal of the material on record, it appears that series of applications are filed by the petitioner to stall the auction. Hence, we do not find any merit in this Writ Petition.

Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

September 18, 2015

MD