

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

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WRIT PETITION No.37721 of 2015

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

This writ petition is filed for a Mandamus to declare the action of the 1st respondent – Bank in taking steps to auction the property, which is claimed by the petitioner, as illegal and arbitrary.

The 2nd respondent has created mortgage over the subject property in favour of the 1st respondent - Bank in view of the loan facility extended to her. When the petitioner has committed default in payment of loan amount, the 1st respondent – Bank has taken steps under the provisions of the SARFAESI Act and issued the auction notice to auction the property on 26.11.2015.

Claiming partition of the said property and also questioning the transfer of property in favour of the 2nd respondent and the mortgage created in favour of the 1st respondent, the petitioner has already approached the Civil Court.

During the course of hearing, it is brought to our notice by the learned Standing Counsel appearing for the 1st respondent that auction was not conducted on 26.11.2015 in view of the interim orders obtained from the Debts Recovery Tribunal, Hyderabad, by the mother of the petitioner.

The property claimed by the petitioner is not sold in auction, as stated by the learned standing counsel appearing for the 1st respondent. However, if the petitioner claims right over the property mortgaged by the 2nd respondent, he can as well approach the Debts Recovery Tribunal, Hyderabad by filing an implead petition in

the pending application already filed by his mother or by filing an independent application before the Debts Recovery Tribunal.

Since the petitioner has already approached the Civil Court and the application filed by the mother of the petitioner before the Debts Recovery Tribunal is stated to be pending, we are not inclined to grant the relief as prayed for.

Accordingly, the Writ Petition is dismissed, granting liberty to the petitioner to approach the Debts Recovery Tribunal. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

03.12.2015

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