

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

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WRIT PETITION No.23185 OF 2015

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

Heard Sri T. Vijay Kumar, learned counsel for the petitioner, and Sri K. Suryanarayana, learned counsel for respondent No.1, and perused the material on record.

2. In this Writ Petition, the petitioner has questioned the possession notice, dated 10-09-2014, in respect of the house property bearing No.5-9-673 and 674, on an extent of 156 square yards, equivalent to 130.41 square meters, situated at Gunfoundry, Hyderabad, issued by respondent No.1 - Indian Overseas Bank, Koti, Hyderabad, under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

3. The petitioner and respondent No.2 are owners of their respective portions in the property bearing House No.5-9-673 and 674. Though ground floor portions are separate, entry/passageway is common and as per the partition, terrace rights of the first floor are fallen to the share of the petitioner.

4. Respondent No.2 is a guarantor for the loan advanced by respondent No.1 to the third party borrower. As there is default in payment of loan installments, respondent No.1 initiated proceedings under the provisions of SARFAESI Act and taken steps to sell the mortgaged property. When the possession notice was issued, this writ petition is filed mainly on the ground that the petitioner has rights of terrace of the entire building of the first floor, as such, it is not open to respondent No.1 to take possession of the subject property. It is her grievance that as she is nothing to do with the guarantee given by respondent No.2 from her share of the property, no steps can be taken by respondent No.1 against her property infringing her rights.

5. Earlier, counter affidavit was filed by respondent No.1 disputing the allegations made in the writ petition. Now, an additional counter affidavit is filed stating, in clear terms, that the property of respondent No.2 alone is under mortgage and it is nothing to do with the property of the petitioner. Further, in the sale notice to be issued, it would be mentioned in the terms and conditions of the auction, at a readable place, that terrace rights of the first floor of eastern side portion of the subject property are not subject matter of the auction.

6. Thus, the additional counter affidavit of

respondent No.1 clearly shows that property of the petitioner is not subject matter of the mortgage or auction and respondent No.1 is nothing to do with her property and they are not taking any steps against her property.

7. In view of the above and in view of the statement made by respondent No.1 at paragraph No.4 of its additional counter affidavit, dated 09-09-2015, filed before this Court, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition stand disposed of.

**R. SUBHASH
REDDY, J**

A. SHANKAR NARAYANA, J

September 10, 2015.
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