

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

WRIT PETITION No.20941 of 2015

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

This writ petition is filed by the petitioner challenging the order dated 17.03.2015 in CrI.M.P.No.247 of 2015 passed by the Chief Metropolitan Magistrate, Cyberabad, in taking physical possession of the property consisting of residential house on Plot No.12/part (north side) admeasuring 148 square yards, situated in Sy.No.1096/1 and 1096/2 at Medchal Village, Ranga Reddy District, as arbitrary and illegal.

2. The petitioner is the guarantor for the loan obtained by the 2nd respondent borrower from the 1st respondent-Bank. As the 2nd respondent defaulted in repaying the loan amount, the 1st respondent-Bank has initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Seeking assistance of the Advocate-Commissioner to take possession of the secured assets, the 1st respondent-Bank has filed CrI.M.P.No.247 of 2015 before the Chief Metropolitan Magistrate, Cyberabad, and the same was allowed by order dated 17.03.2015, pursuant to which warrants were issued to the Advocate-Commissioner to execute the same and for delivery of possession of the subject

property in favour of the 1st respondent-Bank. Challenging the same, the petitioner has filed the present writ petition.

3. It is the case of the petitioner that the 2nd respondent has entered into an agreement with her by way of Memorandum of Understanding (MOU) dated 16.06.2007 to sell the subject property and the petitioner agreed to pay the remaining instalments payable to the 1st respondent-Bank. It is stated that though the petitioner paid certain instalments to the 1st respondent-Bank, she has committed default in repaying the remaining instalments due to the financial stringencies.

4. This Court, while issuing notice before admission, by order dated 09.07.2015, directed that no further steps should be taken pursuant to the impugned order dated 17.3.2015 in Crl.M.P.No.247 of 2015, on condition of the petitioner depositing Rs.3,00,000/- within six weeks from the date of the said order.

5. On instructions, it is submitted by the learned Standing Counsel for the 1st respondent-Bank that the said conditional order is not complied with by the petitioner.

6. We have perused a copy of the MOU dated 16.06.2007 relied upon by the petitioner, which reveals that the said document was executed only between the petitioner and the 2nd respondent borrower and the 1st respondent-Bank is not a party to the said MOU. Admittedly, the secured asset is mortgaged in favour of the 1st respondent-Bank for the loan

obtained by the 2nd respondent borrower. Merely, based on the MOU entered between the petitioner and the 2nd respondent in respect of the secured asset, the petitioner will not get any right over the same.

7. Therefore, we do not find any merit to grant the relief sought for in this writ petition. However, it is made clear that if the petitioner paid some amount and the same was accepted by the 1st respondent-Bank, this order will not preclude the 1st respondent-Bank to settle the account by giving appropriate notice to the 2nd respondent borrower for payment of the balance amount, in accordance with law.

8. Subject to the above direction, this writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

03.09.2015.
Msr

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