IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

WRIT PETITION No.22060 OF 2015

Between:

Smt. M.Laxmi Radha.

.. Petitioner

And

M/s. Canara Bank rep. by its Authorized Officer,
SME Branch, Kukatpally, Ranga Reddy District,
and another.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 28-07-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers Yes/No
   may be allowed to see the Judgment?

2. Whether the copies of judgment may be Yes/No
   marked to Law Reporters/Journals

3. Whether Their Lordship wish to
   see the fair copy of the Judgment?

Yes/No

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

WRIT PETITION No.22060 of 2015

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

This writ petition is filed to declare the action of the 1st respondent Bank in not accepting the payments towards instalments and not regularizing the loan account bearing Account No.2727619000377 of the 2nd respondent with the 1st respondent Bank, as illegal and arbitrary.

The 2nd respondent had borrowed a total sum of Rs.12,00,000/- from the 1st respondent Bank on 08.12.2008 and agreed to repay the loan amount in 114 equated instalments of Rs.14,350/-. In respect of the subject property, the 2nd respondent created equitable mortgage by deposit of title deeds on 10.12.2008. The 2nd respondent-borrower committed default in payment of loan amount and his loan account is declared as non-performing asset as per the R.B.I. Guidelines. Thereafter, 1st respondent Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). After issuing demand notice under Section 13 (2) of the Act, possession notice under Section 13 (4) of the Act was issued and constructive possession was taken on 27.06.2013.

The 1st respondent Bank also filed an application under Section 14 of the Act before the Chief Metropolitan Magistrate, Ranga Reddy District and the same was numbered as Crl.M.P.No.693 of 2014, in which an Advocate Commissioner was appointed to take possession of the secured asset. Accordingly, notice was issued to the borrower.

When the Advocate Commissioner went to the subject flat, the 2nd respondent was not there and the petitioner, who was in fact found to be in possession of the subject flat, requested for some time to vacate the premises. Thereafter this writ petition is filed.

In this writ petition, it is the case of the petitioner that the 2nd respondent has executed an agreement of sale in her favour on 06.06.2009, agreeing to sell the subject property to her for a total consideration of Rs.12,40,000/-, and also received an advance amount of Rs.1,19,242/-. It is the further case of the petitioner that she agreed to pay the balance amount in instalments to the 1st respondent Bank. It is submitted that in view of the agreement of sale executed by the 2nd respondent on 06.06.2009, the petitioner is entitled to pay the balance amount in instalments and seek regularization of the loan account of the 2nd respondent with the 1st respondent Bank.

A counter affidavit is filed by the Branch Manager of the 1st respondent Bank, wherein while denying the allegations of the petitioner, it is categorically stated that as the 2nd respondent committed default in payment of the loan amount, proceedings under the Act are initiated and also obtained orders in Crl.M.P.No.693 of 2014 filed before the Chief Metropolitan Magistrate, Ranga Reddy District. Precisely, it is the case of the 1st respondent that as the petitioner claims right over the secured asset based on the unregistered agreement of sale executed on 06.06.2009, she has no right to interdict the proceedings initiated under the Act and seek directions as prayed for.

Heard learned counsel for the petitioner and learned counsel for the 1st respondent Bank and also perused the material placed on record.

The claim of the petitioner is based on unregistered agreement of sale, dated 06.06.2009, executed in respect of the property in question, which in fact is executed subsequent to its mortgage in favour of the 1st respondent Bank. As the property in question is the subject matter of mortgage before the 1st respondent Bank, it is not open to the 2nd respondent to enter into agreement of sale for selling the same property to the petitioner. Even otherwise, the said agreement of sale is unregistered and is not in accordance with the provisions of the Indian Stamp Act and the Registration Act, 1908. When the loan account, of which, the petitioner seeks regularization, is of the 2nd respondent, it is for the 2nd respondent to pay the arrears and seek regularization of his account, but merely on the basis of the unregistered agreement of sale dated 06.06.2009, the petitioner is not entitled to seek directions by way of Mandamus to the 1st respondent to accept the payment of the loan amount in instalments. In the absence of any legal right, the petitioner, who is not the borrower of the loan amount from the 1st respondent Bank, is not entitled to seek the directions as prayed for, as the unregistered agreement of sale dated 06.06.2009 will not confer any rights on the petitioner. Moreover if the 2nd respondent has received any amount from the petitioner pursuant to the said agreement of sale, it is for the petitioner to take appropriate steps against the 2nd respondent, but she is not entitled to seek directions as prayed for in this writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

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

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

28.07.2015
v v