

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

WRIT PETITION No.42197 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 in taking steps to sell the 2nd respondent's property bearing Plot No.5/D, admeasuring 2,045 sq.yards, in Sy.No.48 situated at Kattedan Village, Rajendernagar Taluq, Ranga Reddy District, pursuant to Mega e-auction sale notice, dated 21.11.2015, as illegal and arbitrary.

The 2nd respondent borrowed certain amounts from the 1st respondent Bank and committed default. In view of the default committed by the 2nd respondent, the 1st respondent Bank has initiated proceedings under the SARFAESI Act in respect of the secured asset. It is the case of the petitioner that he has filed a suit against the 2nd respondent for recovery of money and obtained attachment before judgment by order dated 15.11.2011, which was effected on 25.11.2011. It is the case of the petitioner that the 2nd respondent has mortgaged the subject property in favour of the 1st respondent on 13.12.2011 i.e., subsequent to attachment ordered by the Court below, and as such, the very mortgage itself is illegal.

During the course of hearing, Sri K.Mallikarjuna Rao,

learned Standing Counsel appearing for the 1st respondent, submitted that against the measures taken by the 1st respondent Bank under the SARFAESI Act, the 2nd respondent has filed Securitisation Application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal and obtained interim direction not to confirm the sale and the said Securitisation Application is pending. It is further submitted that as the suit filed by the petitioner was already decreed, the attachment effected will not bind the 2nd respondent.

As much as the measures taken by the 1st respondent under the SARFAESI Act are the subject matter of challenge before the Tribunal, there is no reason to entertain this writ petition filed by the petitioner. As the matter is seized off by the Tribunal, the petitioner can as well question the subject proceedings either independently or by taking appropriate steps in the Securitisation Application already filed by the 2nd respondent.

In view of effective alternative remedies available to the petitioner, we dismiss the writ petition only on said ground, leaving it open to the petitioner to take steps as referred to above.

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

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

19.01.2016
v v