HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION Nos.41003, 41193 AND 41255 OF 2015

COMMON ORDER: (Per Hon'ble Sri Justice A. Shankar Narayana)

These three Writ Petitions are filed by the respective petitioners seeking *Mandamus* to declare the action of respondent No.1 -the authorized signatory of State Bank of Hyderabad, Vijaya Mahal Center Branch, Nellore, in issuing e-auction notice, dated 07.11.2015, under Section 13(4) (provision of law wrongly mentioned) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 concerning house-cum-site residential property situated in Nellore Mypadu Road, Srinivasa Nagar, 5th Lane, House No.28-1-639 (Old), 28-2-1363 (New) in Survey No.307/03 in an extent of 128 square yards and building (16 ankhanas) (hereinafter referred to as 'secured asset') belonging to respondent No.2 M/s. Veeradhimma Malakonda Reddy and Veeradhimma Madhusudhana Reddy, the auction of which was scheduled to take place on 18.12.2015 between 2.00 and 3.00 p.m. as highly illegal, improper, unjust, arbitrary and in violation of Article 14 and 300-A of the Constitution of India and consequently direct respondent No.1 (bank) to realize the debt payable by respondent No.2 (borrower) to the bank after realizing the suit amounts claimed by the petitioners from respondent No.2 by virtue of the orders of attachment before judgment dated 15.11.2014 in I.A. No.1008 of 2014 in O.S. No.695 of 2014, dated 15.11.2014 in I.A. No.1015 of 2014 in O.S. No.697 of 2014, and dated 17.11.2014 in I.A. No.1024 of 2014 in O.S. No.699 of 2014, respectively, passed by the learned Principal Senior Civil Judge, Nellore.

2(a) The facts would show that respondent No.2 received a total sum of Rs.6,64,750/-, Rs.5,50,000/- and Rs.5,50,000/- from the respective petitioners and executed promissory notes in their favour promising to pay with interest. However, despite demands, since failed to pay the same, they filed O.S. Nos.695 of 2014, 697 of 2014 and 699 of 2014, respectively, on the file of Principal Senior Civil Judge, Nellore, for recovery of the sums based on the promissory notes executed by him.

(b) It is their further case that they filed interlocutory applications in their respective suits under Order - XXXVIII Rule - 5 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking attachment before judgment of the secured asset and the learned Senior Civil Judge, Nellore by the orders, dated 15.11.2014, 15.11.2014 and 17.11.2014, directed respondent No.2 to produce either property or money as security within 48 hours failing which order of attachment before judgment over the secured asset would come into force and that the respondent No.2 failed to produce security.

(c) While so, the bank got issued the e-auction sale notice dated 07.11.2015 published in Eenadu Telugu daily news paper, Nellore Edition, stating that M/s. Veeradhimma Malakonda Reddy (borrower) and Veeradhimma Madhusudhana Reddy took loan from it and by 30.06.2015, they became due an amount of Rs.10,05,327.45 paise along with costs and interest to the bank mortgaging title deed of the secured asset in its favour and the auction was scheduled to take place on 18-12-2015 between 2-00 and 3-00 p.m. with the reserve price of Rs.27.20 lakhs.

(d) In W.P. No.41003 of 2015, petitioner states that respondent No.2 executed three promissory notes, dated 11.01.2012, 01.05.2012 and 01.12.2013 in his favour and received a total sum of Rs.6,64,750/- promising to repay the same with interest and since respondent No.2 committed default, he filed the suit and obtained conditional attachment order as mentioned in the above.

(e) In W.P. No.41193 of 2015, petitioner states that respondent No.2 executed three promissory notes, dated 15.10.2012, 12.03.2013 and 01.10.2013 in her favour by borrowing the amounts of Rs.2.00 lakhs, Rs.2.00 lakhs and Rs.1.50 lakhs thereunder totalling to Rs.5,50,050/- promising to repay the same with interest and since respondent No.2 committed default, she filed the suit and obtained conditional attachment order as mentioned in the above.

(f) In W.P. No.41255 of 2015, petitioner states that respondent No.2 executed three promissory notes, dated 01.12.2013, 04.01.2014 and 01.02.2014 in her favour by borrowing the amounts of Rs.1.00 lakh, Rs.3.00 lakhs and Rs.1.50 lakhs thereunder totalling to Rs.5,50,050/- promising to repay the same with interest and since respondent No.2 committed default, she filed the suit and obtained conditional attachment order as mentioned in the above.

(g) Though some other facts are narrated by the petitioners, we are of the view that they are unnecessary to advert to.

(h) Therefore, the petitioners' request to quash the impugned e-auction notice, dated 07.11.2015, whereunder auction was scheduled to take place on 18.12.2015 and for consequential direction to the bank to release the due amount payable by the respondent No.2 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') only after satisfying their respective suit claims.

3(a) Identical counters have been filed by the bank resisting the requests of the petitioners. It is stated that the instant writ petitions are not maintainable as there is efficacious alterative remedy available to them under Section 17 of the Act. It is stated that this Court ordered notice before admission on 18.12.2015 permitting it to proceed with the auction on 18.12.2015 as per e-auction notice, however, directed not to issue sale certificate to the third party auction purchasers for a period of four (4) weeks initially. Accordingly, auction was conducted on 18.12.2015 and two bidders participated in it and one Mr. J. Suresh became the highest bidder for the amount of Rs.27.30 lakhs as against the reserve price of Rs.27.20 lakhs, the bid was accepted by the bank and the successful bidder deposited 25% of the bid amount i.e., Rs.6,82,500/-.

(b) The bank states that on the application made by respondent No.2 on 09.01.2013 to sanction term loan of Rs.10.00 lakhs, the same was sanctioned against the land and building mortgaged by him on 31.01.2013 and the memorandum of deposit of title deed was made in the books of the bank and the sale was registered with the office of the Sub-Registrar of Stonehousepet, Nellore on that day itself vide document No.382/2013. The loan was repayable in monthly installments of Rs.22,517/- commencing with the payment of first installment on or before 29.03.2013, since respondent No.2 committed default, his account was classified as 'Non-Performing Asset' on 29.06.2015 as the amount due as on 30.06.2015 was Rs.10,05,327-45 paise and the amount due as on 31.12.2015 was Rs.11,64,000/- which includes interest up to date, legal expenses and other charges incurred by it for conducting auction.

(c) It is also stated that if the sale is concluded in all aspects,
it would be realizing a sum of Rs.27.30 lakhs and after adjusting the amount due to it and whatever remains as surplus, it would be kept in fixed deposit in the name of respondent No.2 since the petitioners claimed that the attachment orders issued by the Civil Court in the respective suits are in force and in case any further orders are passed by the Court, the amount would be remitted as per law without making any claim or lien over the said amount.

(d) It is further stated that respondent No.2 created mortgage by depositing title deed on 31.01.2013 which was prior to the orders of attachment, dated 15.11.2014 and 17.11.2014, and, therefore, request of the petitioners for issue of consequential direction to release their amounts in the first instance is unsustainable and hence sought to dismiss all the writ petitions.

4. Heard Sri P. Phalguna Rao, learned counsel for the petitioners, and Sri A. Krishnam Raju, learned standing counsel for the bank, and perused the impugned notice and also the other material available on record.

5. As seen from the material on record and the arguments advanced by the learned counsel for both sides, respondent No.2 while contracting term loan of Rs.10.00 lakhs by making an application on 09.01.2013, on sanction of the loan by the bank, deposited title deed of the secured asset with it on 31.01.2013 for an amount of Rs.10.00 lakhs and the Memorandum of Deposit of Title Deed was made in the books of the bank as well as deposit of title deed on the very same day i.e., 31.01.2013 and was registered with the office of the Sub-Registrar of Stonehousepet, Nellore also on the same date vide document No.382/2013; whereas the attachment orders were passed by the learned Principal Senior Civil Judge, Nellore in the respective suits filed by the petitioners were on 15.11.2014 and 17.11.2014 respectively. Thus, the bank is the prior mortgager, and, therefore, the attachment orders passed by the Civil Court are subject to realization of the amount by the bank, as such, the request of the petitioners to direct the bank to adjust the suit claims in the first instance and then to

realize the due amount under the term loan sanctioned by it is unsustainable.

6. During the course of arguments, learned counsel for the petitioners would submit that after satisfying the debt due to the bank, the balance amount from the sale proceeds that would be realized by the bank on completion of all formalities of sale may be directed to be deposited to the credit of the suits filed by the petitioners before the Civil Court, but, we are not inclined to accept that request since in its counter, the bank has specifically mentioned that after recovery of the amount due to it, whatever remains as surplus would be kept in fixed deposit in the name of respondent No.2, appears to be just and reasonable. Thus, the writ petitions are devoid of merits.

7. For the aforesaid reasons, the interim order passed by this Court on 18.12.2015 directing the bank not to issue sale certificate to the third party auction purchasers for a period of four weeks, which has been extended from time to time, stands vacated to enable the bank to complete the sale formalities in all aspects and after recovery of the amount due to it, to deposit the surplus amount in fixed deposit in the name of respondent No.2. It is also open to the petitioners to seek appropriate orders from the competent Court of law in regard to

surplus amount.

8. Accordingly, the Writ Petitions are dismissed as indicated above. There shall be no order as to costs.

9. As a sequel thereto, Miscellaneous Petitions, if any, pending in these writ petitions stand disposed of.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

January 28, 2016.
PV