

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.36531 of 2016

ORDER: (per V. Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the order passed by the Additional Chief Metropolitan Magistrate (FAC Chief Metropolitan Magistrate), City Criminal Courts, Hyderabad dated 14-10-2016 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. Heard Sri R.A. Achuthanand, learned counsel appearing for the petitioner. Mr. G.K. Deshpande, learned counsel takes notice for the respondents.

3. The petitioner herein is the wife of the 3rd respondent, who was the borrower. The 5th and 6th respondents herein are the children of the petitioner herein.

4. Challenging a sale notice dated 07-02-2014 in respect of the property that is now the subject matter of the dispute, the petitioner filed an appeal in S.A.No.190 of 2014 on the file of Debts Recovery Tribunal at Hyderabad. Originally the appeal was as against the sale notice. But during the pendency of the appeal, the sale itself took place and hence, the petitioner got her prayer in the appeal amended so as to challenge the sale that took place. Eventually, by an order dated 22-01-2016, the Debts Recovery Tribunal dismissed the appeal as devoid of merits. Till date, the said order of the Tribunal has not been challenged anywhere. Therefore, at least as on date the dispute with regard to the sale of the property has attained finality.

5. Thereafter, the Bank initiated proceedings under Section 14 before the Chief Metropolitan Magistrate, Hyderabad. It appears that the petitioner herein filed objections. The objections were overruled by an order dated 16-09-2016. On the request of the petitioner, the Chief Metropolitan Magistrate appears to have posted the petition for passing further orders to 07-10-2016 and later to 21-10-2016 and thereafter to 06-01-2017.

6. However, the Chief Metropolitan Magistrate advanced the hearing later and passed an order for possession appointing a Commissioner.

7. Contending that such an order behind her back could not have been passed, the petitioner has come up with the above writ petition.

8. But as seen from the narration of facts, the sale of the property has attained finality and the order of the Tribunal in S.A.No.190 of 2014 confirming the sale, is not under challenge before any forum.

9. As a matter of fact, the members of the family of the borrower appear to have come one after the other to this Court. The son as well as the daughter have already exhausted the quota. The petitioner herein is the wife of the borrower. She has also exhausted her quota by filing an appeal before the Tribunal and losing the same.

10. A writ petition filed by the 5th respondent-daughter in W.P.No.3815 of 2015 was also dismissed on 14-09-2016. The prayer in the said writ petition was as to the validity of the securitisation measures, but the writ petition was dismissed on 14-09-2016.

11. In so far as the contention regarding the procedure followed by the Chief Metropolitan Magistrate is concerned, it is seen from the statutory scheme that the Chief Metropolitan Magistrate is entitled to

pass one order, by which he could have appointed an Advocate Commissioner after rejecting the objections. There is no procedure for passing a separate order rejecting the objections and posting the case for further orders to a later date. Therefore, after the rejection of the objections of the petitioner, it was only a matter between the Bank and the Court. Hence, we find nothing wrong in the approach adopted by the Chief Metropolitan Magistrate, though he could have passed the last order as part of the order passed on 16-09-2016 itself.

12. Therefore, the writ petition is dismissed. If the petitioner and the other family members of the borrower are willing to hand over possession as per the order of the Chief Metropolitan Magistrate to the Commissioner, then the Commissioner may grant two (2) weeks time to take possession.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No costs.



V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 26-10-2016

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