

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.9139 and 18599 of 2016

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01.08.2016

Between:

Akula Susheel Kumar

..Petitioner

And

The State Bank of Hyderabad,
Hyderabad and others

..Respondents

Counsel for the petitioner: Mr.G.Allabakash

Counsel for respondent No.1: Mr.A.Krishnam Raju

Counsel for respondent Nos.2 and 3: --

The Court made the following:

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COMMON ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These two writ petitions are filed by a third party to the loan transaction between respondent No.1 and respondent No.2, for which respondent No.3 stood as a guarantor.

2. It is the pleaded case of the petitioner that he entered into an agreement of sale, dated 03.03.2015, with respondent No.3 in respect of a house, which was mortgaged to respondent No.1 as a security for sanction and payment of loan to respondent No.2 and that if the said property is sold in pursuance of sale notice, dated 24.02.2016, his interests will be seriously affected. Considering the plea of the petitioner, this Court, by interim order, dated 22.03.2016, in W.P.No.9139 of 2016, permitted the petitioner to deposit in all a sum of Rs.1,30,00,000/- in two equal tranches on or before 30.03.2016 and 30.04.2016 respectively. However, the petitioner could deposit only Rs.25,00,000/- and 10,00,000/- on 18.04.2016 and 03.05.2016 respectively. As the intended sale has become abortive, respondent No.1 has issued a fresh/second sale notice on 16.05.2016, which was again assailed by the petitioner in W.P.No.18599 of 2016.

3. Mr.G.Allabakash, learned counsel for the petitioner, has submitted that the petitioner holds an agreement of sale with respondent No.3 and that he is prepared to pay the reserve price of Rs.1,84,97,000/-, if reasonable time is granted.

4. Mr.A.Krishnam Raju, learned counsel for respondent No.1, has submitted that there is no privity of contract between the petitioner and respondent No.1 and that the petitioner failed to comply with the conditional order, dated 22.03.2016, in W.P.No.9139 of 2016. He has further submitted that while respondent No.1 may not have any

objection for receiving the balance reserve price within a reasonable time, considering the conduct of the petitioner, there is no likelihood of his standing on his assurance that he will pay the balance amount in reasonable installments.

5. In our opinion, the petitioner, who allegedly entered with respondent No.3, an unregistered agreement of sale, dated 03.03.2015, which is not legally enforceable, has no *locus* to assail the action of respondent No.1 – a security holder, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘the SARFAESI Act’) in seeking to recover the loan advanced to respondent No.2, for which respondent No.3 stood as a guarantor. Therefore, we are not inclined to accept the submission of the learned counsel for the petitioner. Moreover, the petitioner has failed to comply with the aforesaid conditional order of this Court and in the event, the petitioner’s offer is accepted and respondent No.1 is restrained from proceeding with the sale of the property, if the petitioner fails to comply with the undertaking, that would cause serious prejudice to the interests of respondent No.1. We have, in fact, asked the learned counsel for the petitioner whether his client is prepared to forgo the amounts that were paid by him towards the purported installments in the event of his being unable to pay the reserve price in full. The learned counsel is not prepared to accept this arrangement.

6. In the aforementioned facts and circumstances of these cases, we are of the opinion that the petitioner has no legally enforceable right for seeking a *mandamus* against respondent No.1 to prevent him from enforcing the security interests under the SARFAESI Act.

7. These Writ Petitions are, accordingly, dismissed. Respondent No.1 is directed to refund the sum of Rs.35,00,000/- (Rupees thirty five lakh only) deposited by the petitioner in pursuance of the interim order,

dated 22.03.2016, in W.P.No.9139 of 2016, within a period of four weeks from today.

8. As a sequel to dismissal of these Writ Petitions, W.P.M.P.Nos.11585 and 19643 of 2016 in W.P.No.9139 of 2016 and W.P.M.P.No.22842 of 2016 in W.P.No.18599 of 2016 filed by the petitioner for interim reliefs shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

A.V.SESHA SAI, J

01st August, 2016

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