THE HON'BLE SRI JUSTICE R.KANTHA RAO
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO
WRIT PETITION No.6784 of 2016

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

The 2nd respondent bank is the secured creditor and the 3rd respondent is the borrower respectively as defined under Sections 2(1)(zd) and 2(1)(f) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). The 3rd respondent having availed some financial assistance from the 2nd respondent and for the default committed, the account was classified as non-performing asset (NPA) as defined under Section 2(o) of the Act and pursuant to which the Bank as secured creditor initiated the securitization measures.

2) It is the submission of the learned counsel for the petitioner that the petitioner is a third party to the secured loan transaction, but for claiming interest in part of the secured asset as it is subsequent to the mortgage created over the secured asset by the borrower in favour of the secured creditor; the petitioner purchased part of the security interest under agreement of sale and pursuant to which he maintained a suit for specific performance in O.S. No.1236 of 2016 on the file of XVI Additional District Judge, Malkajigiri, Secunderabad by showing the respondent Nos.2, 3 and 4 herein i.e., the secured creditor, the borrower and the 4th respondent as 3rd respondent-borrower subsequently sold the entire property in favour of the 4th respondent, including the part of the property already entered into agreement of sale with the petitioner by 3rd respondent. It is also the grievance that behind back of the petitioner and without impleading her even knowing the prior sale agreement, the 4th respondent filed S.A. No.6 of 2016 along with one P.Mallareddy against the respondent Nos.2 and 3 herein ie., the secured creditor and the borrower and obtained orders behind the back. It is now impugning the same, the present writ petition is filed.

3) Heard the learned counsel for the petitioner and also Sri P.Hari

Prasad, learned standing counsel for the 2nd respondent-Bank before admission and perused the material on record.

4) There are no grounds to admit the writ petition or kept pending but for disposal giving liberty by passing the following order:

As there is a remedy of appeal under Section 18 of the Act for any person aggrieved (which includes the petitioner even third party to the S.A. No.6 of 2016) by the order of the Debt Recovery Tribunal under Section 17 of the Act within 30 days to impugn in an appeal; the impugned order passed by the Debt Recovery Tribunal in S.A. No.6 of 2016 was even dated 15.02.2016 and by now 30 days limitation period to maintain an appeal under Section 18 of the Act expired, however by the time the writ petition is filed on 29.02.2016 it is within the time of one month, liberty is given to the petitioner to approach D.R.A.T under Section 18 of the Act to maintain an appeal by invoking Section 14 of the Limitation Act by virtue of this order for excluding the period covered by the writ petition in computing the period of 30 days to entertain.

5) With the above observations, the writ petition is disposed of. No costs. Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

R.KANTHA RAO, J

Dr.B.SIVA SANKARA RAO, J

21-04-2016
Ksh