

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

WRIT PETITION No.24338 of 2016

Date:22.07.2016

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Between:

M. Laxmi Radha

.. Petitioner

and

M/s. Canara Bank,
SME Branch, Prasanthi Nagar,
Kukatpally, Hyderabad,
Rep. by its Authorised Officer
and another.

.. Respondents

Counsel for the Petitioner: Sri A.Srinath.

Counsel for Respondents :

THE COURT MADE THE FOLLOWING:

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

The petitioner who claims to be a holder of agreement of sale with respondent No.2 in respect of the property, which was mortgaged by the latter to respondent No.1 for availing a loan, ventured to file this writ petition, which is second in succession to W.P.No.22060 of 2015, apprehending her dispossession.

W.P.No.22060 of 2015 was filed by the petitioner for declaring the action of respondent No.1 – Bank in not accepting the payments towards instalments and not regularizing the loan account of respondent No.2. While dismissing the writ petition, a Division Bench of this Court made the following observations:

“The claim of the petitioner is based on unregistered agreement of sale, dated 06.06.2009, executed in respect of the property in question, which in fact is executed subsequent to its mortgage in favour of the 1st respondent Bank. As the property in question is the subject matter of mortgage before the 1st respondent Bank, it is not open to the 2nd respondent to enter into agreement of sale for selling the same property to the petitioner. Even otherwise, the said agreement of sale is unregistered and is not in accordance with the provisions of the Indian Stamp Act and the Registration Act, 1908. When the loan account, of which, the petitioner seeks regularization, is of the 2nd respondent, it is for the 2nd respondent to pay the arrears and seek regularization of his account, but merely on the basis of the unregistered agreement of sale dated 06.06.2009, the petitioner is not entitled to seek directions by way of Mandamus to the 1st respondent to accept the payment of the loan amount in instalments. In the absence of any legal right, the petitioner, who is not the borrower of the loan amount from the 1st respondent Bank, is not entitled to seek the directions as prayed for, as the unregistered agreement of sale dated 06.06.2009 will not confer any rights on the petitioner. Moreover if the 2nd respondent has received any amount from the petitioner pursuant to the said agreement of sale, it is for the petitioner to take appropriate steps against the 2nd respondent, but she is not entitled to

seek directions as prayed for in this writ petition.

Post dismissal of the said writ petition, respondent No.1 – Bank has obtained possession order in CrI.M.P.No.693 of 2014 from the Chief Metropolitan Magistrate, Ranga Reddy District, and in pursuance thereof, respondent No.1 is seeking to take physical possession of the property.

Mr. A. Srinath, learned counsel for the petitioner, has submitted that his client is prepared to participate in the auction and offer her bid and that, till the auction is held, she may not be dispossessed.

We are afraid we cannot accept the request of the learned counsel for the petitioner. In view of dismissal of W.P.No.22060 of 2015 with the observations as reproduced above, the petitioner has lost her right to claim the property. Therefore, the petitioner cannot resist any measures that may be taken by respondent No.1 towards recovery of the mortgage debt from respondent No.2.

Hence, this Writ Petition is dismissed. However, this order will not preclude the petitioner from approaching respondent No.1 and settling its claim.

As a sequel to dismissal of the writ petition, WPMP.No.30000 of 2016 is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

22.07.2016

v v