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

WRIT PETITION No.23860 of 2016

Date:20.7.2016

Between:
Ragam Narasinga Rao @ Narasinga Rao Yadav, S/o Late R.Mallesh

.....Petitioner

And:
Bank of Baroda, Hyderabad, reptd by its Chief General Manager and four others.

....Respondents

Counsel for the petitioner: Mr. R.V.S.S.Prasad

Counsel for Respondents: None appeared

The Court made the following:
ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed for a *Mandamus* to set aside the sale notice, dated 21.6.2016, pertaining to auction of the petitioner's residential house bearing MCH.Nos.18-507/1 and 18-507/A on Plot Nos.303 and 303A admeasuring 133.33 square yards and 266.66 square yards, respectively, with total plinth area of 1,116 square feet, in Survey

Nos.867/1, 868 and 869/1 of Mallikarjuna Nagar, Malkajgiri Village and Mandal, Ranga Reddy District, as illegal and arbitrary.

The petitioner is a guarantor in respect of the loan obtained by respondent Nos.4 and 5. As the borrowers failed to repay the loan amount, a notice under Section-13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') was issued to them as well as the petitioner being the guarantor. On receipt of the said notice, the petitioner is stated to have made a representation before respondent Nos.1 to 3 on 21.3.2016 requesting for one time settlement.

The grievance of the petitioner is that without considering the said request, respondent Nos.1 to 3 issued the impugned sale notice fixing 22.7.2016, as the date of auction of his property.

Ordinarily, this Court seldom interferes with the measures taken by the financial institutions for recovery of the loan amounts under the provisions of the SARFAESI Act.

In ***United Bank of India Vs. Satyawati Tondon and others***[1], the Supreme Court has shown a serious concern at the High Courts continuing to ignore the availability of statutory remedies under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the SARFAESI Act and exercise the jurisdiction under Article-226 of the Constitution of India for passing the orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues.

Similar views were expressed by the Supreme

Court in an earlier judgment in ***Union Bank of India and Anr. Vs. Panchanan Subudhi***[2].

In the light of the above settled legal position, we are not inclined to entertain this Writ Petition as, the petitioner has an effective remedy of appeal under Section-17 of the SARFAESI Act. However, before availing such remedy, the petitioner is permitted to make a representation before respondent Nos.1 to 3. If such representation is made by the petitioner, respondent Nos.1 to 3 shall consider and take appropriate decision on the same before the sale is held/confirmed.

Subject to the above observations and directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WPMP.No.29396 of 2016 filed by the petitioner for interim relief is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE G.SHYAM PRASAD

20th July 2016
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[1] (2010) 8 SCC 110

[2] (2010) 15 SCC 552