

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

-
WRIT PETITION NO.20341 OF 2016
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O R D E R: (Per Hon'ble Sri Justice Sanjay Kumar)

Heard Sri Mahadeva Kanthrigala, learned counsel for the petitioner, and
Sri B.Chandrasen Reddy, learned counsel for the Canara Bank.

2. The prayer of the petitioner in this case is as under:

“It is, therefore, prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the e-auction notice dated 13.06.2016 published in Eenadu Telugu Daily News Paper by conducting the auction dated 15.07.2016 in connection with the property of the petitioner two floured building D.No.18-8-1,

5th Lane, Kedareswarpet, Vijayawada, Krishna District, is illegal, arbitrary, against Principles of Natural justice, pending suit in O.S.No.100 of 2012 on the file of the II Additional district Judge, Vijayawada and the provisions of SARFAESI Act and rules there under and pass such other order or orders in interest of the justices.”

3. Perusal of the affidavit filed in support of the writ petition reflects that the petitioner does not fall within the definition of 'Borrower' under Section 2(1) (f) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). It is his case that he executed a registered sale deed in favour of the second respondent who, in turn, executed another registered sale deed in favour of the third respondent herein. It appears that the mortgage in favour of the Canara Bank was created by the third respondent by virtue of the rights created in his favour under the registered sale deed executed by the second respondent selling the subject property to him.

4. Given the afore-stated facts, Sri Mahadeva Kanthrigala, learned counsel for the petitioner, having argued for some time, seeks leave to withdraw the writ petition reserving liberty to the petitioner to approach the Debts Recovery Tribunal concerned under Section 17 of the SARFAESI Act.

5. Leave granted.

The Writ petition is accordingly dismissed as withdrawn with the liberty afore-stated. Pending miscellaneous petitions shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

June 24, 2016
LMV