

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT PETITION No. 5481 of 2016

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

This writ petition was filed with the following prayer:

“That this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of the Mandamus declaring the action of the Respondent Bank in not issuing a "No-Objection Certificate" for release of the said property mentioned as Item No.3, property No.4 in the demand notice which is a site of an extent of 1394 sq.yards, Pedakakani Village, Guntur District, so as to enable the petitioner to discharge the loan amount by depositing the entire sale consideration of Rs.80 lakhs into loan account as arbitrary, illegal, unjust, unwarranted, and ultra vires, and consequently direct the Respondent Bank to issue "No-Objection Certificate" and release the said property to enable the petitioner to sell the same and deposit the entire sale consideration into the delinquent loan account of the Petitioner Firm in the Respondent Bank and to pass such other and further orders as deemed fit and proper in the circumstances of the case.”

The item of property, release of which is sought by way of this writ petition, belongs to one Kunkalaguntla Pallavi, the guarantor who offered her property as a security interest for the loan availed by the petitioner-company.

It is however stated by Sri Maruthi Jadhav, learned counsel representing Sri B.S. Prasad, learned panel counsel for the State Bank of India, that the said Kunkalaguntla Pallavi filed S.A.No.240 of 2017 before the Debts Recovery Tribunal, Visakhapatnam, seeking cancellation of the e-auction sale notice dated 23.06.2017 issued by the Bank and the proceedings initiated by it under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') in relation to seven items of property, one of which is the item of property, which is the subject matter of this writ petition.

As the owner of the said item of property has herself chosen to avail the statutory remedy provided to her under the SARFAESI Act, we

see no reason as to why this writ petition filed by the principal borrower seeking to protect the said item of property should be entertained.

The writ petition is accordingly dismissed on this ground leaving it open to the jurisdictional Tribunal to deal with the application filed before it under Section 17 of the SARFAESI Act on its own merits in accordance with law.

Pending Miscellaneous Petitions shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 24.07.2017

JUSTICE GUDI SEVA SHYAM PRASAD

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