

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION NO.14707 OF 2017

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The prayer of the petitioners in this case reads as under:

'This Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of "Writ of Mandamus" by declaring the action of the Respondent No.2 in proceeding with the attachment of the property i.e. two Residential Flats bearing Nos.301 & 302 in 3rd Floor having a total plinth area of 2500 SFT including 2 Car parking, amenities and common areas along with an undivided share of land admeasuring 60 Sq. Yards in the Complex known as West Park Residency in premises House bearing No.11-4-618, situated at A.C. Guards Road, Hyderabad belonging to the Respondent No.3, towards lean, by overlooking and ignoring the interest of the Writ Petitioners, since they are also having lean over the aforesaid Flats to recover the arrears and future amounts of maintenance as per the Orders dt.09-01-2017 obtained by them in M.C.No.323 of 2014 on the file of IX Addl. M.S.J. Hyderabad as violation of the principles of natural justice and consequently the Hon'ble Court may direct the Respondent No.2 to protect the interest of the Writ Petitioners while attaching the aforesaid Flats of Respondent No.3 in the interest of justice and may pass such other Order or Orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

The first petitioner was the wife of the third respondent and it is admitted that their marriage stood dissolved in the year 2017 after the institution of this writ petition. By order dated 28.04.2017, this Court permitted the IDBI Bank Limited to proceed further under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act') but directed that any sale held by it shall not be confirmed. This order was extended on 17.07.2017 until further orders.

Though Sri Nazir Ahmed Khan, learned counsel for the petitioners, and Smt. S.Vani, learned counsel for the third respondent, would raise various contentions

before this Court, we are of the opinion that the *inter se* disputes amongst them would not fall for consideration in this writ petition.

Sri B.Harinath Rao, learned counsel for the bank, would inform this Court the learned Chief Metropolitan Magistrate, Hyderabad, already passed an order on 20.10.2017 in exercise of power under Section 14 of the SARFAESI Act in CrI.M.P.No.3746 of 2017 directing delivery of possession to the bank. Sri Nazir Ahmed Khan, learned counsel, would state that he has no objection to the subject properties being brought to sale by the bank but would assert that his clients have a right to make a claim in the balance proceeds, if any, in terms of the maintenance decree obtained by them in M.C.No.323 of 2014 on the file of the learned IX Additional Metropolitan Sessions Judge, Hyderabad.

As the flats in question admittedly belong to the third respondent who has not come before this Court challenging the action of the bank in initiating proceedings under the SARFAESI Act and as the petitioners merely seek to lay a claim over the sale proceeds left over, if any, after the bank adjusts its outstanding dues against the same, we are of the opinion that no further adjudication is warranted in this writ petition. It is open to the petitioners to seek appropriate orders from the Civil Court with regard to their claim over the balance sale proceeds, if any, that would arise from sale of the secured assets, if any, by the bank.

The writ petition is accordingly closed. Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

15th NOVEMBER, 2017

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