

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

WRIT PETITION No.42025 of 2017

ORDER: (per Justice Sanjay Kumar)

Challenge in this writ petition is to the order dated 05.12.2017 passed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal No.74 of 2013/231. This appeal arose out of S.A.No.25 of 2011 filed by the petitioners herein before the Debts Recovery Tribunal, Visakhapatnam. The prayer of the petitioners in the said S.A. was to set aside the sale notice dated 22.01.2011 issued by the State Bank of India proposing to hold the auction sale of the petitioners' properties, which were offered as secured assets, on 23.02.2011. This Securitisation Application was dismissed by the Tribunal on 11.12.2012. Aggrieved thereby, the petitioners approached the Appellate Tribunal by way of the aforestated appeal. As the S.A. stood dismissed, the bank issued a fresh sale notice on 07.01.2013. It appears that the petitioners filed an application in the appeal pending before the Appellate Tribunal challenging the subsequent sale notice on various grounds.

It is not in dispute that the initial sale notice dated 22.01.2011 which was subjected to challenge before the Tribunal at Visakhapatnam came to naught. Significantly, the subsequent sale notice dated 07.01.2013 was never the subject matter of S.A.No.25 of 2011 before the Tribunal at Visakhapatnam and challenge thereto was raised straight away in the appeal by way of an application. Taking note of this fact, the Appellate Tribunal dismissed the appeal by the order under challenge holding that the appeal itself was rendered infructuous as the main sale notice dated 22.01.2011 worked itself out as no sale took place pursuant

thereto and the subsequent sale notice dated 07.01.2013 could not be subjected to challenge in the first instance before the Appellate Tribunal. We find no error in this reasoning of the Appellate Tribunal.

The writ petition is therefore dismissed on this short ground leaving it open to the petitioners to pursue remedies available to them in law, if any, in accordance with the due procedure.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 12.12.2017
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