

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.29023 OF 2017

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

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

“For the reasons stated in the accompanying affidavit the petitioners pray that this Hon'ble court may be pleased to issue a Writ, or direction more particularly one in the nature of Writ of Mandamus declaring the impugned proceedings of the respondent No.1 vide Proceeding No. C2/3163/2017, dated 30.04.2017 without issuing notice and has no authority as per the act as illegal, arbitrary and unconstitutional and consequently set aside the orders of the 1st respondent and pas such other or further orders as this Hon'ble court may deem fit and proper in the circumstances of the case.”

The impugned proceedings dated 30.04.2016 (wrongly shown as 30.04.2017 in the prayer) were issued by the Collector and District Magistrate, Nalgonda, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act').

Sri Sreenivasa Rao Velivela, learned counsel for the auction purchaser in relation to the property which is the subject matter of the impugned proceedings dated 30.04.2016, would inform this Court that the possession has already been delivered to the State Bank of Hyderabad (now, the State of Bank of India), the second respondent herein, pursuant to the impugned proceedings and the bank, in turn, delivered the same to his client, being the auction purchaser.

When asked, Sri Nilesh Narania, learned counsel for the petitioner, would inform this Court that S.A.No.16 of 2011 was already filed by his

client before the Debts Recovery Tribunal, Hyderabad, aggrieved by the proceedings initiated by the respondent bank under the SARFAESI Act and after the sale of the subject property was held by the bank in the course thereof, a Miscellaneous Application was filed by his client seeking amendment of the prayer in the pending S.A. along with a condone delay petition, so as to lay a challenge to the said sale.

We are at a loss to understand as to why the petitioner chose to come before this Court when she thought it fit to assail the sale which was held subsequent to her filing of the S.A., by seeking amendment of the prayer therein. She could as well have sought an amendment with regard to the order secured by the bank under Section 14 of the SARFAESI Act also. It is not permissible to an aggrieved borrower to prosecute parallel proceedings before the jurisdictional Debts Recovery Tribunal and this Court simultaneously. Allowing the same would be nothing short of an abuse of process and render the judicial process aleatory.

Thus, for reasons more than one, we are of the opinion that this writ petition does not deserve consideration on merits.

The writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

P. KESHA RAO,J

Date: 16.02.2018
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