

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

WRIT PETITION NO.5986 of 2018

ORDER: (per SK,J)

The petitioners seek to assail the demand notice dated 04.11.2016 issued by the Canara Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), the consequential possession notice dated 25.01.2017 (wrongly mentioned as 29.01.2017 in the prayer) under Section 13(4) thereof and the auction notice dated 24.01.2018 published under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules of 2002'). The claim of the petitioners is that their brother, the sixth respondent herein, mortgaged properties, in which they also have a share, with the Canara Bank. The petitioners earlier filed S.A.No.112 of 2017 before the Debts Recovery Tribunal, Visakhapatnam, assailing the possession notice issued under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Rules of 2002. However, in the affidavit filed in support of the writ petition, the petitioners baldly stated that the Tribunal closed S.A.No.112 of 2017 by order dated 20.09.2017. A copy of the said order was not placed on record and Sri G.Ram Gopal, learned counsel for the petitioners, would submit that his instructions are to the effect that the said case was simply closed.

However, Sri Dishit Bhattacharjee, learned counsel for the respondent Canara Bank, placed before this Court the order dated 20.09.2017 passed by the Tribunal in S.A.No.112 of 2017.

Perusal thereof reflects that the said order runs into 19 pages and did not amount to mere closure of the case simplicitor. The Tribunal went

into the merits of the matter and recorded in para 11 of the said order that the petitioners herein, being the applicants in the S.A., failed to give documentary evidence that they are also having a share in the application schedule property. The Tribunal further recorded that the very fact that the petitioners/applicants did not file a partition suit against their brother clearly shows that they had no share, claim or any right over the property in question.

In the light of these clear findings recorded by the Tribunal which are subsisting as on date, it is not open to the petitioners to once again put forth the same claim and assail the auction notice dated 24.01.2018. If they are aggrieved by the findings recorded by the Tribunal in the order dated 20.09.2017 in S.A.No.112 of 2017, the remedy of the petitioners lies elsewhere. We therefore see no reason to entertain the writ petition and adjudicate the same on merits.

The writ petition is accordingly dismissed on this short ground.

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

No order as to costs.

SANJAY KUMAR,J

P.KESHAHA RAO,J

Date:23.02.2018

GJ