HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.18899 of 2018

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

The petitioner assails the e-auction notice dated 25.04.2018 issued by the State Bank of India under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') proposing to put to sale the secured assets, being plot Nos.9 and 40 in Sy.Nos.107-1 to 9, Thumakunta Village, Santhebidnaur Panchayat, Hindupur Mandal, Anantapur District. The petitioner, being a third party to the SARFAESI proceedings, claims rights in these plots under the registered sale deed dated 08.05.2015 executed in his favour by M/s.Manohar Industries, the third respondent herein, the borrower from the State Bank of India.

Sri Maruthi Jadhav, learned counsel representing Sri B.S.Prasad, learned counsel for the State Bank of India, would inform this Court that the demand notice under Section 13(2) of the SARFAESI Act was issued as long back as on 10.10.2011, upon the third respondent's loan account being classified as a non-performing asset.

A copy of the said demand notice is placed on record and perusal thereof demonstrates that the subject properties, being plots Nos.9 and 40 in Thumakunta Village, Hindupur Mandal, Anantapur District, were specifically shown as secured assets under Part-II of Schedule-C. Learned counsel would further inform this Court that the auction held on 14.05.2018 was successful and the sale certificate has already been executed in favour of the auction purchaser.

In the light of Section 13(13) of the SARFAESI Act, no borrower, after receipt of the demand notice under Section 13(2) of the SARFAESI Act, is entitled to transfer by way of sale or otherwise any of the secured assets referred to in the said notice without prior written consent of the secured creditor. In the case on hand, it is not in dispute that such prior consent was not obtained from the State Bank of India by the third respondent/borrower before executing the sale deed in favour of the petitioner in May, 2015. The said transaction is therefore voidable at the instance of the bank.

Sri Maruthi Jadhav, learned counsel, would assert that the bank is not willing to recognize the said transaction.

In that view of the matter, the petitioner can claim no rights under the said transaction to the detriment of the bank.

The writ petition is utterly devoid of merit and is accordingly dismissed.

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

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

Dt: 09.07.2018.
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