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

WRIT PETITION No. 15321 OF 2017

ORDER: (per the 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 above named petitioner pray in the interest of justice that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st and 2nd respondents in confirming the sale on 10.04.2017 by taking forceful possession with respect to petitioner's own house property situated in plot No.153 admeasuring 166.66 square yards in Sy.No.76/A of Thatiannaram Village, Hayathnagar Revenue Mandal, Ranga Reddy District contrary to the orders passed by the Debt Recovery Tribunal dated 25.03.2014 is illegal, arbitrary, malafide, motivated and contrary to the provisions of SARFAESI Act, 2002 and rules made thereunder and consequently direct the 1st and 2nd respondents to redeliver the possession of the petitioner's house property in Plot No.153 situated in Sy.No.76/A of Thattiannaram village and to pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

The petitioner claims to be a third party to the loan transaction between the Central Bank of India and Palasa Apparao, the 4th respondent herein. Ms. Neelima, learned counsel representing Mr. G. Krishna Murthy, learned counsel for the petitioner, would state that the Central Bank of India issued e-auction sale notice dated 22.02.2014, in the first instance, fixing the auction sale of the secured asset belonging to the petitioner on 26.03.2014. The petitioner approached the Debts Recovery Tribunal, Hyderabad, by way of S.A.No.246 of 2014 filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "SARFAESI Act, 2002") aggrieved by the said e-auction sale notice dated 22.02.2014. By docket order dated 25.03.2014 passed in I.A.No.1280 of 2014 in S.A.No.246 of 2014, the Tribunal took note of the dispute as to the title over the secured asset, put-forth by the petitioner, and directed the bank to proceed with the auction of the secured asset fixed on 26.03.2014 pursuant to the e-auction sale notice dated 22.02.2014 but restrained it from confirming the sale until further orders. It is an admitted fact that no sale materialized on 26.03.2014 for want of bidders. The bank thereupon issued e-auction sale notice dated 04.02.2017 proposing to hold the auction sale of the very same secured asset on 13.03.2017. The petitioner then filed S.A.No.108 of 2017 before the Debts Recovery Tribunal-I, Hyderabad, assailing the said e-auction sale notice dated 04.02.2017. By way of his interim prayer, the petitioner sought stay of all further proceedings in relation to the said secured asset. Admittedly, no interim order was granted by the Tribunal and only notice was ordered to the bank upon the interlocutory application. Both the S.As., are stated to be pending consideration.

While so, Ms. Neelima, learned counsel, would now submit before this Court that by virtue of the docket order dated 25.03.2014 passed by the Tribunal in I.A.No.1280 of 2014 in S.A.No.246 of 2014, the bank could not have confirmed the sale even pursuant to the e-auction sale notice dated 04.02.2017, but after holding the auction sale on 13.03.2017 the bank confirmed the sale in favour of the auction purchaser, namely, Pingali Nageswara Rao, the 5th respondent herein, on 10.04.2017. This, according to the learned counsel, cannot be sustained. Further, as the petitioner was dispossessed of his property pursuant to the aforestated sale, he was constrained to file this writ petition seeking redelivery of possession.

The argument of the learned counsel proceeds on a fundamental misconception.

Be it noted that S.A.No.246 of 2014 was filed assailing sale notice dated 22.02.2014, whereby the bank proposed to hold the auction sale of the secured asset on 26.03.2014, while S.A.No.108 of 2017 filed by the petitioner was directed against the e-auction sale notice dated 04.02.2017, whereunder the sale of the secured asset was proposed to be held on 13.03.2017. Both the aforestated sale notices constitute separate causes of action and that was the reason why the petitioner himself filed two separate securitization applications. The interim order passed in S.A.No.246 of 2014 was therefore limited to the sale which was to be held on 26.03.2014 pursuant to the impugned e-auction sale notice dated 22.02.2014. The said order, by no stretch of imagination, could be extended to the subsequent sale notice dated 04.02.2017 which was the subject matter of S.A.No.108 of 2017. However, that is exactly the endeavour of the petitioner presently. When it is an admitted fact that the sale held on 26.03.2014, pursuant to the e-auction sale notice dated 22.02.2014, did not fructify owing to want of bidders, the said sale notice worked itself out. The subsequent sale notice dated 04.02.2017 was a fresh attempt on the part of the bank to sell the secured asset and aggrieved thereby, the petitioner himself approached the Tribunal by way of S.A.No.108 of 2017. It is an admitted fact that no interim protection was afforded to the petitioner in this securitization application. Without obtaining such interim protection, it is not open to the petitioner to now claim that the bank violated the earlier order of the Tribunal, which, on the face of it, had no application to the subsequent proceedings.

Ms. Neelima, learned counsel, would further seek to advance arguments on the issues which were raised by the petitioner in the pending securitization applications. As the second securitization application, being S.A.No.108 of 2017, would still survive for consideration, it is for the

Tribunal to consider those issues and it would be wholly inappropriate for this Court to adjudicate upon such issues in the present writ petition.

Viewed from any angle, we find no merit in this writ petition.

The writ petition is accordingly dismissed.

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

SANJAY KUMAR, J

P. KESHAVA RAO, J

Date: 08.02.2018
ES/CCM

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते