

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

WRIT PETITION NO.26517 of 2018

ORDER: (per SK,J)

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

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more in the nature of Writ of Mandamus declaring the action of the 2nd respondent in conducting the e-auction of the mortgaged property viz., house bearing No.1-33-12, Plot No.25, SBI Colony, Pedda Waltair, Visakhapatnam on 30.04.2018 in pursuance to the notice issued on 09.04.2018 even without putting the petitioner or any others and intentionally violating the mandatory stipulations contained under Rules 8 and 9 of SARFAESI Rules and the law declared by the Hon'ble Apex Court even without giving minimum period of 30 days notice as being illegal, arbitrary and is in violation of established judicial precedents and in violation of Articles 14 & 21 of the Constitution of India and consequently set aside the same and pass such other order or orders as are deemed fit and proper.'

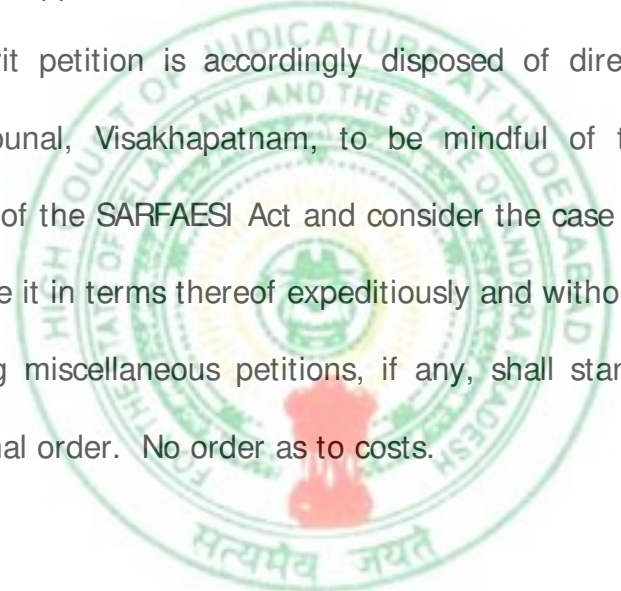
Perusal of the record reflects that the petitioner already moved a Securitisation Application before the Debts Recovery Tribunal, Visakhapatnam, which has been taken on file as S.A.No.386 of 2017. After the auction sale was held on 30.04.2018, the petitioner filed an amendment petition in I.A.No.1185 of 2018 in the said Securitisation Application seeking amendment of his pleadings and also the prayer therein. In the event the amendment petition is ordered by the Tribunal, the auction sale held on 30.04.2018 would also be the subject matter of challenge in the Securitisation Application. That being so, we are not inclined to entertain this writ petition. It is not open to a litigant to pursue two parallel remedies simultaneously.

Sri Ganduri Nageswara Rao, learned counsel for the petitioner, would however assert that the Tribunal is not taking up the case and that irreparable injustice would be done to his client owing to this delay.

It is distressing to note that Debts Recovery Tribunals are unmindful of the mandate of Section 17(5) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), which requires a Securitisation Application made under Section 17(1) thereof to be disposed of within sixty days normally and in any event, within four months from the date of making of such application.

The writ petition is accordingly disposed of directing the Debts Recovery Tribunal, Visakhapatnam, to be mindful of the mandate of Section 17(5) of the SARFAESI Act and consider the case of the petitioner pending before it in terms thereof expeditiously and without further delay.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

A large, faint green circular seal of the High Court of Andhra Pradesh, Visakhapatnam Bench, is centered in the background. It features the court's name in English and Odia, along with the motto 'सत्यमेव जयते' (Satyameva Jayate) at the bottom. A red ink mark is visible in the center of the seal.

SANJAY KUMAR,J

T.AMARNATH GOUD,J

Date:30.07.2018

Note:

Furnish C.C. by tomorrow.

(B/o)

GJ