

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

WRIT PETITION NO.9450 of 2017

ORDER: (per SK,J)

The prayer in this writ petition reads as under:

'For the reasons stated in the accompany affidavit, it is therefore prayed 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 respondent in trying to auction the petitioner's house hold property bearing Door No. 5-23-131 (5-2-3-131) to an extent of 243 Sq.yards in Survey No. 143/2, Ward No. 5, Block No. 23, Near Peenaripalem, Narsipatnam, Vishakapatnam District under the guise of proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in connection with a Loan Account for which the petitioner is neither borrower nor guarantor is arbitrary and illegal and consequently set aside the proceedings initiated under the SARFAESI Act and to pass such other order or orders appropriate in the case.'

Perusal of the affidavit filed in support of the writ petition reflects that the claim of the petitioner is that Repco Home Finance Limited, Visakhapatnam, the first respondent herein, is proposing to sell her house property by taking recourse to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), in relation to the security offered by the third respondent herein for availing loan facilities from it. According to the petitioner, she never sold the subject house property to anybody but taking advantage of the loan obtained by her from one Pydithalli Naidu in the year 2010 on the strength of a mortgage created over the subject house property, false and fabricated documents were pressed into service in collusion with the third respondent which were utilised by him for securing loan facilities from the first respondent company. It is on the strength of these pleadings that the petitioner would seek a declaration that the action of the first respondent company in trying to auction her house property under the SARFAESI Act in

connection with the loan account for which she was neither a borrower nor a guarantor is illegal.

The Authorised Officer of the first respondent company filed a counter affidavit along with supporting documents.

Perusal thereof reflects that the petitioner is stated to have executed a registered Sale Agreement-cum-General Power of Attorney bearing Document No.2503 of 2010 dated 12.08.2010 in relation to the subject house property in favour of one Pydithalli Naidu S/o late Trinadh, who, in turn, sold the said property to the third respondent under registered sale deed bearing Document No.1188 of 2015 dated 31.03.2015.

Though Sri T.Koteshwara Prasad, learned counsel for the petitioner, would contend that the aforestated documents are false and fabricated, the irrefutable fact remains that they are registered documents. In the event the petitioner has any grievance with regard to the same, her remedy is to challenge the said documents or seek cancellation thereof and such remedy would lie elsewhere. This Court cannot undertake such an exercise in a writ petition filed under Article 226 of the Constitution.

On this short ground, the writ petition is dismissed leaving it open to the petitioner to avail appropriate remedies in accordance with law before the proper forum, if so advised.

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

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:24.01.2018
GJ