

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.4680 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging an auction notice dated 29.12.2018, fixing the date of auction as 31.01.2019, the borrower has come up with the above writ petition.

2. Heard Mr. M. Venkateswarlu, learned counsel for the petitioner and Mr. A. Satyanarayana, learned counsel for the respondent - bank.

3. The prayer in the writ petition is not simply a prayer to set aside the auction sale notice dated 29.12.2018. The prayer is actually for setting aside the auction held on 31.01.2019 on the ground that the bank did not have an enforceable security interest in the properties in question. Even in the prayer portion, the petitioner has almost sought a declaration that there were no loans sanctioned on 27.07.2012 and that no mortgage was created and that, therefore, there is no occasion for invoking the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').

4. The above prayer is very strange, especially in view of the fact that on the date on which an auction notice was published on 29.12.2018, the bank had already obtained a decree on the mortgage in O.A.No.259 of 2018. The date of the judgment of the tribunal is 13.11.2018.

5. Moreover, the auction sale notice was published on 29.12.2018, the auction was held on 31.01.2019 and the sale certificate was issued on 18.02.2019. The above writ petition was filed on 05.03.2019.

6. After having suffered a judgment in O.A.No.259 of 2018 and after allowing the sale to take place, the petitioner has come up with the above writ petition questioning the very sanction of the loan and the creation of the mortgage interest. Therefore, there are no bonafides. If at all, the petitioner could have gone as against the auction sale notice before the tribunal under Section 17 of the Act. The petitioner has not done so. Therefore, we refuse to entertain the writ petition.

Therefore, the writ petition is dismissed. If the bank has realized more money than what is due to them and if the bank has other properties, which are no more required, the same should be released to the petitioner. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

June 17, 2019
DSK