

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.5093 of 2019

ORDER: *(per V. Ramasubramanian, J)*

Claiming that he holds a prior mortgage in respect of the secured asset and that he had also obtained a decree for enforcement of the mortgage, the petitioner has come up with the above Writ Petition challenging the steps initiated by the Canara Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Securitization Act, 2002'), in respect of the very same secured asset.

2. Heard Mr.Hari Prasad, learned Counsel for the petitioner.
3. The petitioner is a third party to the transaction between the Bank and the borrower. The petitioner claims that they have a prior mortgage and that therefore the mortgage in favour of the 1st respondent/Bank is subject to their right over the secured asset.
4. But the contention raised by the petitioner is wholly a matter of fact and not an issue of law. Unless the fact is established through evidence before an appropriate forum, the question of law would not follow.
5. The question as to whether a mortgage in favour of the petitioner was created prior in point of time or not, and the question as to the effect of the mortgage created in favour of the Bank, are all questions of fact, which the petitioner should first

seek adjudication of before the Debts Recovery Tribunal. The Supreme Court has clarified that the expression “person aggrieved would include even third party”. Therefore, leaving it open to the petitioner to approach the Debts Recovery Tribunal under Section 17 of the Securitization Act, 2002, the Writ Petition is dismissed.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 13, 2019
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