

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

Writ Petition No.5310 of 2019

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

Aggrieved by an auction sale notice issued in terms of the Security Interest (Enforcement) Rules, 2002, a third party claiming to hold an agreement for the purchase of the security interest, has come up with the above Writ Petition.

2. Heard Mr.P.Ramachandran, learned Counsel for the petitioner. Mr.Satyanarayana, learned Counsel takes notice for the 1st respondent/Bank.

3. The 2nd respondent in the Writ Petition is the borrower who has created a security interest on the property in question in favour of the 1st respondent/Bank. Since the 2nd respondent committed default in repayment, the Bank initiated measures under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Securitization Act, 2002'), and attempted to bring the property to sale through a first auction sale notice, dated 12.01.2019, fixing the date of auction as 08.02.2019.

4. Challenging the measures so taken, the petitioner filed an appeal in S.A.No.50 of 2019 under Section 17 before the Debts Recovery Tribunal. The petitioner also sought stay of further proceedings by filing I.A.No.540 of 2019. The Tribunal passed an Order on 07.02.2019 refusing to stay the auction. However, the

Tribunal made it clear that the sale will be subject to the outcome of the appeal.

5. But unfortunately, for the bank, the sale did not materialize on 08.02.2019. Therefore, the Bank issued a fresh notice, dated 20.02.2019. Instead of going before the very same Tribunal, the petitioner has chosen now to come up with the above Writ Petition challenging the fresh auction notice.

6. We do not find any merits in the Writ Petition. Once the petitioner has chosen to go before the Debts Recovery Tribunal under Section 17 and challenged the first auction notice, he cannot come up with a challenge to the second auction notice before this Court in a writ petition under Article 226 of the Constitution of India. If at all the petitioner should have gone only before the Debts Recovery Tribunal.

7. In any case, we fail to understand the *locus* of the petitioner. The petitioner is merely a holder of an agreement for the purchase of the property. He cannot prevent the Bank from initiating steps under the Securitization Act, 2002, for the recovery of the dues. The petitioner is not a purchaser, but only the holder of an agreement. Therefore, when the very right of the petitioner is in doubt, the petitioner cannot approach this Court.

8. Relying upon Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, and a decision of the Division Bench of the Madras High Court in **V.SRIDHAR v. AUTHORIZED OFFICER, INDIAN BANK¹**, it is contended by the learned Counsel for the petitioner

¹ 2018 (1) Writ Law Reporter, 145

that the impugned sale notice is in gross violation of the statutory prescription.

9. But we would not go into the said question for two(2) reasons viz., (1) that the challenge is made by an agreement-holder whose entitlement to a decree for specific performance is still pending before the Civil Court, and (2) that the petitioner has already approached the Tribunal in respect of the first auction notice and hence he cannot ride two horses. Therefore, 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. KESHA RAO, J

March 14, 2019
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