THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.11371 of 2019

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

The petitioners have come up with the above writ petition challenging an auction sale notice issued under the Security Interest (Enforcement) Rules, 2002.

2. Heard Mr. Karunakar Reddy, learned counsel for the petitioners.

3. The case of the petitioners is that they executed three sale deeds on 07.09.2016 in favour of the borrower and the borrower created a mortgage in favour of the first respondent – bank on the strength of the sale deeds. But no cheques were issued, as stated in the sale deeds. Therefore, according to the petitioners, the sale deeds are sham and nominal documents and no title ever passed on. Hence, it is contended that no valid security interest could have been created and the steps initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are not valid.

4. But there is a fundamental flaw in the contention of the petitioners. The sale deeds are dated 07.09.2016. The cheques issued by the borrower, who was the purchaser, towards payment of sale consideration, were dated a few days or a couple of months before the date of execution of the sale deeds. The sale deeds contain a recital about the receipt of the cheques. Therefore, what the petitioners now want to contend is that the recitals contained in a registered document

are not correct. Such a contention, based upon oral assertion and oral evidence, will be contrary to Section 92 of the Evidence Act. If cheques had not been handed over, the petitioners ought to not have executed the sale deeds. After having executed the sale deeds, the petitioners cannot come and complain that the bank ignored the warnings given by the petitioners.

Hence, we do no see any merits in the writ petition. Therefore, it is dismissed. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

June 11, 2019
DSK