THE HONOURABLESRI JUSTICE UJJAL BHUYAN

AND

THE HONOURABLEMRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.16877 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. Surender Desai, learned counsel for the petitioner and Mr. A.Krishnam Raju, learned counsel for respondent Nos.1 & 2 State Bank of India.

2. In this writ petition, petitioner has challenged docket order dated 23.03.2022 passed by the Debts Recovery Tribunal-I at Hyderabad (Tribunal) in I.A.No.187 of 2022 in S.A.No.55 of 2022.

3. It is stated that 3rd respondent as the borrower had availed loan from respondent State Bank of India. For default in repayment, respondent State Bank of India initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly referred to hereinafter as the 'SARFAESI Act'). As a consequence, respondent State

Bank of India has proposed to auction sale the schedule property. It is stated that the schedule property is an ancestral property to which petitioner is entitled to a share. To assert her right, petitioner has filed a suit for partition being O.S.No.248 of 2021, which is stated to be pending on the file of XXVI Additional Chief Judge, City Civil Court, Hyderabad.

4. Earlier when the secured creditor had issued auction sale notice, petitioner had approached this Court by filing W.P.No.12962 of 2022, which was disposed of by directing the petitioner to approach the Tribunal. Consequently, petitioner approached the Tribunal and filed S.A.No.55 of 2022. Petitioner also filed an interlocutory application being I.A.No.187 of 2022 for stay of all further proceedings pursuant to auction sale notice dated 05.02.2022. By the docket order dated 23.03.2022, Tribunal stayed further proceedings pursuant to the auction sale notice dated 05.02.2022 subject to the condition that petitioner deposits a sum of Rs.1.5 crores in two

installments directly with the respondent State Bank of India. It has been clarified that in the event of non-compliance, respondent State Bank of India would be at liberty to proceed further in accordance with law. I.A.No.187 of 2022 is now posted on 26.04.2022.

5. Mr. A.Krishnam Raju, learned counsel for the respondent State Bank of India submits that Tribunal has directed payment of Rs.1.5 crores in view of the reserve price of Rs.6.25 crores fixed by the respondent State Bank of India in connection with the auction sale, which is commensurate to her share of the schedule property.

6. We are not inclined to entertain the writ petition for more than one reason. Firstly, the docket order dated 23.03.2022 is an interlocutory order. I.A.No.187 of 2022 is still pending before the Tribunal, next date being 26.04.2022. Secondly, the borrower has not approached either this Court or the Tribunal challenging the action taken by the respondent State Bank of India under the SARFAESI Act. Thirdly, there is no order of any Court

including the civil Court determining the share of the petitioner in the schedule property holding the same as ancestral property. Lastly, once a property is put up as a secured asset to avail credit from the secured creditor, recourse to the civil Court *vis-a-vis* the schedule property is not permissible. That apart, if the petitioner is aggrieved by the docket order dated 23.03.2022, she may file appeal before the Debts Recovery Appellate Tribunal, Kolkata under Section 18 of the SARFAESI Act. We see no good reason to entertain the writ petition.

7. Writ Petition is accordingly dismissed. However, there shall be no order as to costs.

8. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

UJJAL BHUYAN,J

SUREPALLI NANDA, J

Date: 01.04.2022
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