

Court No. - 37

Case :- WRIT - C No. - 44591 of 2017

Petitioner :- Deepak Tyagi

Respondent :- Canara Bank, Nehru Nagar, Ghaziabad And 2 Others

Counsel for Petitioner :- Aklank Kumar Jain

Counsel for Respondent :- Siddharth

Hon'ble Amreshwar Pratap Sahi,J.

Hon'ble Rajiv Lochan Mehrotra,J.

Heard learned counsel for the petitioner and Sri K.M. Asthana for the respondent nos. 1 and 2.

The petitioner, according to his own case has become a victim of the circumstances, inasmuch as he entered into a registered agreement to sale in respect of a property which already stood mortgaged with the respondent-Canara Bank.

The proceedings that has now compelled the petitioner to approach this Court are the auction proceedings initiated by the respondent-bank in respect of the mortgaged property. The petitioner is relying on the judgment and decree of the Civil Court dated 25.05.2015, the execution proceedings whereof are pending before the Civil Court and in which the respondent-bank is a party.

The question is whether the judgment and decree obtained by the petitioner can be enforced as against the bank and as to what is the right that the petitioner can claim in respect of a property for which he had only entered into an agreement to sale that too, even after the property had already been mortgaged to the respondent-bank.

This question of fact can either be disposed of by the Court proceeding with the execution proceeding or if the petitioner is aggrieved by the auction proceedings as being in violation of law or the provisions of the SARFAESI Act, 2002, then such a remedy is also available to the petitioner in terms of Section 17 of the SARFAESI Act, 2002. We are, therefore, not inclined to interfere in the matter.

With the above observations, this writ petition is **dismissed**.

Order Date :- 20.9.2017

S.Chaurasia