

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY**

WRIT PETITION NO: 6576 OF 2020

Between:

1. M/s. DSR Farmer's Ware House and 2 Others, a partnership firm having its Office at Survey No.77/1, Dondlavagu Village, Lingala Mandal, Y.S.R. District Andhra Pradesh represented by its Managing partner Smt. Devireddy Sreelatha
2. D. Sreelatha, W/o: D. Sanjeeva Reddy Aged. 40 years Occ. Agriulture Plot No.601, Hill Top Avenue, Servy No.11/31, Kanamet Village, Serlingampally, Hyderabad-500081.
3. D. Sanjeeva Reddy, S/o.Rama Subba Reddy Aged.44 years, Occ. Business Plot No.601, Hill Top Avenue, Servy No.11/31, Kanamet Village, Serlingampally, Hyderabad-500081

...PETITIONER(S)

AND

1. Union Bank of India, (formerly known as Andhra bank) Pulivendula Branch, D.No. 3-5-37, Main Road, Pulivendula 5 1 6390, Kadapa Distuict Represented by its authorized officer
2. Venkateswar Youngali, S/o Y.Narahari Aged about 33 Years Occ Self Employed R/o,1-363/3,Raghava Deluxe Apartments,Bhoiguda Secunderabad TS-500003
3. Mr.Rakesh Niddhalai Yadav, S/o Niddhalai Yadav Aged about 38 Years Occ Self Employed R/o A-1103/04 Bhoomi Darshan Building, Mahavir Nagar near Kamala Ashish Towers,Kandivall West, Mumbai Maharastra - 400067
4. Amit Kumar Saraswat, S/o Rajendra Kumar Saraswat Aged 40 Years Occ Self Employed, R/o,3-6-421,1st Floor,RK Residency,Himayathnagar,Hyderabad,TS.
5. Mr. Vipin Sharma, S/o Dwaraka Prasad Sharma. Aged about 33 Years. Occ Self Employed R/o H.No.19-1915/4/A/1,Murali Nagar Bahadurpura,Hyderabad,Telangana Respondent Nos .2 to 5 are Impleaded as per Court Order dated 08/02/2022 Vide IA No.1 of 2021 in WP No 6576 of 2020

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the Respondent Bank in initiating measures under the provisions of SARFAESI Act when the insurance claim is under process and the action of the Respondent Bank in issuing sale notice d1.02/03/2020 fixing the date of auction as 02/04/2020 without forwong the mandatory provision of the SARFAESI Act and the Security Interest Enforcement Rules thereunder as being illegal, arbitrary, highhanded , against the principles of

natural justice and in violation of Government Orders dt.22/03/2020 and violation of the provisions of SARFAESI Act and Security Interest Enforcement Rules thereunder and in violation of rights guaranteed under Article 14 and -300A of the Constitution of India with a consequential prayer to set aside the auction notices dt.02/03/2020 and the sale conducted by the Respondent Bank on 02/04/2020 and pass

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings initiated by the Respondent under the provisions of SARFAESI Act including all further proceedings pursuant to the Sale Notice dt. 02/ 03/2020 and auction conducted on 02/04/2020, pending disposal of the above Writ Petition and pass

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders dated 23/04/2020 passed in IA No. 1 of 2020 in Writ Petition No. 6576/ 2020 and dismiss the Writ Petition with exemplary costs and pass

Counsel for the Petitioner(s):SRI. KAILASH NATH P S S

Counsel for the Respondents: V DYUMANI

The Court made the following: ORDER

HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
HONOURABLE SRI JUSTICE A. VENKATESHWARA REDDY
W.P.No.6576 OF 2020

Order: *For Ujjal and Justice A. Venkateshwar Reddy*

Heard Mr. S.Nageshwar, learned counsel representing Mr. Kailashnath P.S.S, learned counsel for the petitioners, Ms. V.Dyumani, learned counsel for respondent No.1, and Mr.Ch.Jayakrishna, learned counsel for respondent Nos.2 to 5.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seek quashing of sale notice, dated 02-03-2020 as well as setting aside of auction sale conducted by respondent No.1 on 02-04-2020.

3. Petitioner No.1 is a partnership firm of which, petitioner No.2 is the Managing Partner and petitioner No.3 is her husband. Petitioners availed agricultural term loan of Rs.2.10 crores from respondent No.1 in the year 2014.

4. In the impugned sale notice dated 02-03-2020, it was stated that for failure of the borrowers and the guarantors in repayment of the loan amount, respondent No.1 proposed to hold auction sale of the schedule property on 02-04-2020. As per the said notice, the outstanding dues

quantified by respondent No.1 was Rs.8,48,67,163.00 as on 02-03-2020 with subsequent interest and charges thereon.

5. This Court by order dated 23-04-2020, had admitted the writ petition and granted interim stay as prayed for.

6. The challenge to the impugned sale notice has been made on the following grounds:

(i) E-auction sale notice dated 02-03-2020 was published in the newspaper on 03-03-2020, auction was proposed on 02-04-2020; therefore, there was no clear thirty days' notice for holding auction. This is in violation of Rule 9(1) of the Security Interest (Enforcement) Rules, 2002;

(ii) The demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARESI Act") was not served on the borrowers;

(iii) The impugned notice was issued during the COVID period and as per G.O.Ms.No.13 Health and Family Welfare (D) Department dated 24-03-2020, such auction was prohibited; and

(iv) Petitioners are holding negotiations with insurance companies and it is expected that insurance companies will pay the entire outstanding dues directly to respondent No.1.

7. Each of the above grounds are being contested and disputed by learned counsel for respondent No.1, who has filed counter affidavit as well as an interlocutory application for vacating the interim stay granted on 23.04.2020.

8. In so far respondent Nos.2 to 5 *etc.* auction purchasers are concerned, learned counsel for the said respondents submits that they had responded to the impugned sale notice of respondent No.1 and were successful bidders. They had paid the entire bid amount of Rs.5,31,28,000/00 as against the reserve price of Rs.3,28,00,000.00. The sale has been confirmed whereafter, sale certificate has also been issued. However, in view of the interim stay, the sale certificate has not yet been registered.

9. Without entering into the rival contentions of the parties, we are of the view that under Section 17 of SARDESI Act, petitioners have got an adequate and efficacious alternative remedy of filing securitisation application before the jurisdictional Debts Recovery Tribunal.

10. In the Writ Petition, it is pleaded that because of COVID-19 pandemic, Debts Recovery Tribunals have not been functioning. However, that phase is over now and though, for a while, functioning of the Debts Recovery Tribunals were disrupted on superannuation of

Presiding Officers, now, Central Government has made the necessary appointments and the Debts Recovery Tribunals atleast in Hyderabad are expected to function very shortly.

11. We are of the further view that any determination of the grounds raised by the petitioners may adversely affect the rights of the parties without exhaustion of the statutory remedy. In such circumstances, we relegate the petitioners to the jurisdictional Debts Recovery Tribunal under Section 17 of the SARDAESI Act.

12. If the petitioners file securitisation application before the jurisdictional Debts Recovery Tribunal within a period of thirty days from today and further deposit 15% of the outstanding dues as per the impugned e-auction sale notice dated 02.03.2020 within the aforesaid period of thirty days, the interim stay granted by this Court on 23-04-2020 shall continue till such time, Tribunal proceeds with the securitisation application that may be filed by the petitioners. Further continuation of such interim order beyond the aforesaid thirty days' period would be upon the discretion of the jurisdictional Debts Recovery Tribunal.

12. However, we make it clear that if there is any default on the part of the petitioners either in filing the securitisation application or in making the deposit as above, it would be open to respondent No.1 to proceed

against the petitioners for realization of the outstanding dues in accordance with law.

13. All contentions are kept open.

14. Writ Petition is, accordingly, disposed of. Related interlocutory applications, pending if any, also stand disposed of.

15. No costs.

SD/-P.PADMANABHA REDDY
ASISSTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To,
1. The Authorized Officer, Union Bank of India, (formerly known as Andhra bank) Pulivendula Branch, D.No. 3-5-37, Main Road, Pulivendula 5 1 6390, Kadapa District.
 2. One CC to Sri Kailash Nath P S S Advocate [OPUC]
 3. One CC to Smt. V Dyumani Advocate [OPUC]
 4. One CC to Sri Ch. Jayakrishna, Advocate (OPUC)
 5. Two CD Copies
 6. One Spare Copy

MBC

HIGH COURT

DATED: 28/02/2022

ORDER

WP.No.6576 of 2020



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

ATM (7)
16/4/2022