

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR



PRESENT

HONOURABLE THE CHIEF JUSTICE SRI DHIRAJ SINGH THAKUR
AND
THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION NO: 24942 OF 2022

Between:

Mrs. Satyavathi Alla, W/o. Brahmananda Rao, Aged about 75 years,
Occ. Housewife, Rio. D.No.23-12-8/15, T1, Srinivasa Towers,
Sajjapuram, Tanuku, West Godavari District, Andhra Pradesh

...Petitioner

AND

1. The Karnataka Bank Ltd., Represented by its Authorized Officer,
Tanuku Branch, West Godavari District.
2. Gudivada Venkateswarao, S/o. Venkata Lingam, Aged about 50 years,
Rio. 5-119, Near Saibaba Temple, Peravali Village, Peravali Mandal,
West Godavari District.
3. Veeramallu Nagaraju, S/o. Gangaraju, Aged about 35 years, C/o. Nani
Medical and General Stores, Eletipadu, Iragavaram Mandal, West
Godavari District.

4. Sati Sailaja Rani, W/o. Veerendra Reddy, Aged about 45 years, Flat No.206, Sneha Towers, Ikya Nagar, Tanuku, West Godavari District.
5. kurella Krishna Prasad, K S/o. Venkata Subba Rao, Aged about 40 years, D.No.34-18-2, Near Little Paradise School, Bommala Veedhi, Tanuku, West Godavari District.
6. M/s. Maharaja Constructions, Rep. by its Partners, D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
7. Mrs. Sudha Rani Alla, W/o. AVRGA Raja, Aged about 50 years, Occ. Business, D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
8. Mr. Venkata Rama Gangadhara Raja Alla, S/o. Brahmananda Rao, Aged about 52 years, occ-Business d.no.23-12-8/15, T1, Srinivasa Towers, Sajjapuram, Tanuku, West Godavari district.

...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 of Mandamus and thereby direct the 1st respondent not to confirm the Sale, issue Sale Certificate and execute any register documents in favour of the highest bidder who will be amongst 2nd to 5th respondents and consequently declare the auction notice dt.19.01.2021 as null and void and even cancel the said auction.

IA NO: 1 OF 2024

Between:

1. Gudivada Venkateswarao, S/o. Venkata Lingam, Aged about 50 years, Rio. 5-119, Near Saibaba Temple, Peravali Village, Peravali Mandal, West Godavari District.

....Petitioner/Respondent. No.2

AND

1. Mrs. Satyavathi Alla, W/o. Brahmananda Rao, Aged about 75 years, Occ. Housewife, Rio. D.No.23-12-8/15, T1, Srinivasa Towers, Sajjapuram, Tanuku, West Godavari District, Andhra Pradesh

..... Respondent/ Writ Petitioner

2. The Karnataka Bank Ltd., Rep. by its Authorized Officer, Tanuku Branch, West Godavari District
3. Veeramallu Nagaraju, S/o. Gangaraju, Aged about 35 years, C/o. Nani Medical and General Stores, Eletipadu, Iragavaram Mandal, West Godavari District.
4. Sati Sailaja Rani, W/o. Veerendra Reddy, Aged about 45 years, Flat No.206, Sneha Towers, Ikya Nagar, Tanuku, West Godavari District.
5. Kurella Krishna Prasad, K S/o. Venkata Subba Rao, Aged about 40 years, D.No.34-18-2, Near Little Paradise School, Bommala Veedhi, Tanuku, West Godavari District.
6. M/s. Maharaja Constructions, Rep. by its Partners, D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
7. Mrs. Sudha Rani Alla, W/o. AVRGA Raja, Aged about 50 years, Occ.. D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.

8. Mr. Venkata Rama Gangadhara Raja Alla, S/o. Brahmananda Rao, Aged about 52 years, occ-Business d.no.23-12-8/15,T1, Srinivasa Towers,Sajjapuram, Tanuku,West Godavari district.

...Respondents/Respondents

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 10-08-2022 passed in IA No. 1 of 2022 in WP no. 24942 of 2022 in respect of Item No. 7 of the subject sale notification.

IA NO: 2 OF 2022

Between:

Veeramallu Nagaraju, S/o. Gangaraju, Aged about 35 years, C/o. Nani Medical and General Stores, Eletipadu, Iragavaram Mandal, West Godavari District.

....Petitioner/Respondent.

AND

1. Mrs. Satyavathi Alla, W/o. Brahmananda Rao, Aged about 95 years, Occ. Housewife, Rio. D.No.23-12-8/15, T1, Srinivasa Towers, Sajjapuram, Tanuku, West Godavari District, Andhra Pradesh

..... Respondent/ Writ Petitioner

2. The Karnataka Bank Ltd., Represented by its Authorized Officer, Tanuku Branch, West Godavari District.
3. Gudivada Venkateswarao, S/o. Venkata Lingam, Aged about 50 years, Rio. 5-119, Near Saibaba Temple, Peravali Village, Peravali Mandal, West Godavari District.

4. Sati Sailaja Rani, W/o. Veerendra Reddy, Aged about 45 years, Flat No.206, Sneha Towers, Ikya Nagar, Tanuku, West Godavari District.
5. kurella Krishna Prasad, K S/o. Venkata Subba Rao, Aged about 40 years, D.No.34-18-2, Near Little Paradise School, Bommala Veedhi, Tanuku, West Godavari District.
6. M/s. Maharaja Constructions, Rep. by its Partners, D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
7. Mrs. Sudha Rani Alla, W/o. AVRGA Raja, Aged about 50 years, Occ., D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
8. Mr. Venkata Rama Gangadhara Raja Alla, S/o. Brahmananda Rao, Aged about 52 years, occ-Business d.no.23-12-8/15,T1, Srinivasa Towers,Sajjapuram, Tanuku,West Godavari district.

...Respondents

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 10.08.2022 passed in I.A. No. 1 of 2022 in WP No. 24942 of 2022 in respect of item no.6 of subject sale notification.

IA NO: 1 OF 2023

Between:

The Karnataka Bank Ltd., Represented by its Authorized Officer,
Tanuku Branch, West Godavari District.

.....Petitioner

AND

1. Mrs. Satyavathi Alla, W/o. Brahmananda Rao, Aged about 95 years, Occ. Housewife, Rio. D.No.23-12-8/15, T1, Srinivasa Towers, Sajjapuram, Tanuku, West Godavari District, Andhra Pradesh
2. Gudivada Venkateswarao, S/o. Venkata Lingam, Aged about 50 years, Rio. 5-119, Near Saibaba Temple, Peravali Village, Peravali Mandal, West Godavari District.
3. Veeramallu Nagaraju, S/o. Gangaraju, Aged about 35 years, C/o. Nani Medical and General Stores, Eletipadu, Iragavaram Mandal, West Godavari District.
4. Sati Sailaja Rani, W/o. Veerendra Reddy, Aged about 45 years, Flat No.206, Sneha Towers, Ikya Nagar, Tanuku, West Godavari District.
5. Kurella Krishna Prasad, K S/o. Venkata Subba Rao, Aged about 40 years, D.No.34-18-2, Near Little Paradise School, Bommala Veedhi, Tanuku, West Godavari District.
6. M/s. Maharaja Constructions, Rep. by its Partners, D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
7. Mrs. Sudha Rani Alla, W/o. AVRGA Raja, Aged about 50 years, Occ.. D.No.22-4-5, F.f-4, Park Road, Sri Harshita Towers, Sajjapuram, Tanuku, West Godavari District.
8. Mr. Venkata Rama Gangadhara Raja Alla, S/o. Brahmananda Rao, Aged about 52 years, occ-Business d.no.23-12-8/15, T1, Srinivasa Towers, Sajjapuram, Tanuku, West Godavari district.

....Petitioner/Respondent.

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 date 10.08.2022 passed in I.A No. 1 of 2022 in WP No.24942 of 2022 in respect of item no.6 of subject sale notification.

IA NO: 1 OF 2022

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 stay all further proceedings pursuant to e-auction dt.19.01.2021 including in confirmation of the Sale, issuance of Sale Certificate and not to execute any register documents in favour of the highest bidder who will be amongst 2nd to 5th respondents, pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI E V V S RAVI KUMAR

Counsel for the Respondents No. 6, 7 & 8: SRI MANGENA SREE RAMA

RAO

Counsel for the Respondents No. 2: SRI N.S.S. KRISHNA REDDY

Counsel for the Respondents: SRI BALAJI MEDAMALLI

Counsel for the Respondents No. : SRI. SRAVAN KUMAR MANNAVA

The Court made the following: ORDER



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

Bench
Sr.No:- 40
[3443]

WRIT PETITION NO: 24942 of 2022

Satyavathi Alla

...Petitioner

Vs.

The Karnataka Bank Ltd. and others

...Respondents

Advocate for Petitioner : Mr. P. Rajasekhar appeared vice
Mr. E. V. V. S. Ravi Kumar

Advocate for Respondents : Mr. Sravan Kumar Mannava
Mr. Mangena Sree Rama Rao
Mr. N.S.S. Krishna Reddy
Mr. Balaji Medamalli

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE NINALA JAYASURYA**

DATE : 29-11-24.

Per DHIRAJ SINGH THAKUR, CJ:

The present petition has been filed by the petitioner who was a guarantor to respondent Nos.6 to 8 for a loan which was obtained from the Karnataka Bank. The loan having been declared an NPA, proceedings were initiated by the Bank under the provisions of the SARFAESI Act, 2002, in regard to various properties which were the secured assets mortgaged with the Bank which also included properties listed as item Nos.VI & VII in the schedule of the properties annexed to the auction notice. The auction notice was issued for auctioning the properties belonging to the petitioner on 19.01.2021 and auction was conducted on 15.03.2021.

2. In the auction conducted by the Karnataka Bank/respondent No.1 herein, respondent No.2 was declared as a successful bidder in regard to property at item No.VII in the schedule for a total amount of Rs.50,35,000/- and respondent No.3 was declared as a successful bidder for property at item No.VI in the schedule for an amount of Rs.93,00,000/-.

3. The terms and conditions of the auction notice more particularly clause 8 *inter alia* envisaged as under:

"8) The successful bidder shall deposit 25% of the bid amount (including EMD on the same day of the sale or within 24 hours, being knocked down in his favour and balance 75% of the bid amount within 15 days from the date of sale by RTGS/NEFT/fund transfer credit of account number 7733500200003701, Karnataka Bank Ltd, Tanaku, Branch IFSC code: KARB0000773 or by DD/Pay Order favouring Karnataka Bank Ltd., A/c - "M/s.Maharaja Constructions", Payable at Hyderabad. EMD of unsuccessful bidders will be returned."

4. The amounts reflecting 25% of the bid were deposited by respondent No.2 & 3 on 18.03.2021 and 17.03.2021 respectively and the sale was confirmed in their favour on 18.03.2021 and 17.03.2021 respectively. Insofar as the balance 75% of the bid amount is concerned, the same was deposited by respondent No.3 on 31.03.2021 and respondent No.2 on 14.06.2021, which is stated to be as per the agreement with the respondent Bank and the sale certificate was issued on 07.04.2021 in favour of respondent No.3.

5. It is in the backdrop of the aforementioned facts that the petitioner challenges the action of the Bank in confirming the sale in favour of

respondent Nos.2 & 3 primarily on the ground that no rights could have been transferred to the said auction purchasers in view of the fact that the mandatory provisions of Rule 9(3) of the Rules, 2002, were violated.

6. It was urged that since the auction was conducted on 15.03.2021, the 25% of the bid amount had to be deposited on the same day and in any case by the next working day which happened to be 16.03.2021. The respondent Nos.2 & 3 having deposited the said amounts beyond the date permitted as per the spirit of Rule 9(3) of the Rules, 2002, on 18.03.2021 and 17.03.2021 respectively, the sales could not have been confirmed in regard to the properties in question.

7. For facility of reference, Rule 9(3) of the Rules, 2002, envisages as under:

"9(3) - On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five percent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again."

8. The stand of the respondent Bank is that even when the auction notice envisaged that the amount reflecting 25% of the bid be deposited within the prescribed time, yet it would have been impossible for the auction purchasers to comply with clause 8 of the auction notice or for that matter Rule 9(3) of the Rules, 2002, inasmuch as there was a call for a two-day strike on 15.03.2021 and 16.03.2021 by the officers and workmen of the Bank.

9. The respondent Bank has placed on record an additional affidavit along with a notice expressing regret for the inconvenience which would be caused to the valued customers on account of such a strike. The notice further informed the workmen and staff who were to remain absent on those days and participated in the strike that they would not be entitled to any salary for those days and further that the said action would be without prejudice to the right of the Bank's management to take disciplinary action wherever warranted. The respondent Bank also appears to have informed the Assistant Labour Commissioner (Central) with regard to the strike in the prescribed form.

10. The stand of the auction purchasers on the other hand was that the petitioner ought to have resorted to the alternate remedy by filing an Securitization Application before the Debt Recovery Tribunal in terms of Section 17 of the SARFAESI Act, 2002, and that the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India was not warranted. It was also urged that even when the sale was conducted on 15.03.2021 and the bid amount was deposited by 17.03.2021/18.03.2021, the present petition has been preferred as late as in the month of August, 2022, almost after about one and a half years (17 months).

11. It was also urged that the petitioner being a guarantor of the principal borrowers who are the son and daughter in law of the petitioner and were living under one roof had the knowledge about the auction, issuance of

sale certificate in favour of the respondent No.3 and also had the knowledge that an S.A. had been preferred by respondent No.6 before the DRT, kept quiet, and had not taken any steps to individually challenge the proceedings initiated under the SARFAESI Act, 2002, and thus must be deemed to have waived her right under the SARFAESI Act, 2002, before the DRT and therefore must thus be deemed to have waived her right to challenge the same before the Court. It was also urged that this petition was required to be dismissed on the ground of delay and laches.

12. The stand of the petitioner as is also reflected from the averments made in the writ petition is that the 6th respondent had filed a Securitization Application bearing S.A. No.143 of 2021 before the DRT, Visakhapatnam, but the same was not followed in an effective manner by respondent Nos.6 to 8, resulting in the auction of the property, which was mortgaged with the respondent Bank, and further that after the petitioner came to know about the sale certificate having been issued in favour of respondent No.3, the present petition was filed.

13. We have heard learned counsel for the parties and gone through the records.

14. There is no doubt that there was an alternate remedy available to the petitioner by approaching the DRT in terms of Section 17 of the SARFAESI Act, 2002. It has time and again been reiterated that the High Courts ought not to ordinarily entertain the petition under Article 226 of the

Constitution of India if there was available to an aggrieved person an equally efficacious alternate remedy.

15. In **United Bank of India v. Satyawati Tondon**¹, the Apex Court held:

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

16. The Apex Court in **Radha Krishan Industries Vs. State of Himachal Pradesh**² on a conspectus of various judgments with regard to exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India in cases where there was available an alternate remedy which is equally efficacious, carved out the following principles:

¹ (2010) 8 SCC 110

² (2021) 6 SCC 771

"27.3. Exceptions to the rule of alternate remedy arise where:

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged."

17. The principles of law which had been laid down in the case of **Satyawati Tondon** in regard to exercise of writ jurisdiction under Article 226 of the Constitution of India by the High Courts in regard to provisions of the SARFAESI Act, 2002, are concerned, were reiterated in **Celir LLP Vs. Bafna Motors**³ thus:

"97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the Sarfaesi Act.

** * **

101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the Rdbfi Act and the Sarfaesi Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in SatyawatiTondon, it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the Rdbfi Act and the Sarfaesi Act."

18. Testing the facts of the present case on the touchstone of the law as discussed hereinabove, since learned counsel for the petitioner has failed

³ (2024) 2 SCC 1

to satisfy us as to how the present case falls under any of the exceptions carved out in the case of *Radha Krishan Industries*, we see no merit in the present petition, which is accordingly dismissed. No costs.

Consequently, connected miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

SD/- M. SRINIVAS
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. One CC to SRI. E V V S RAVI KUMAR Advocate [OPUC]
2. One CC to SRI. SRI. N.S.S. KRISHNA REDDY Advocate [OPUC]
3. One CC to SRI. BALAJI MEDAMALLI Advocate [OPUC]
4. One CC to SRI. MANGENA SREE RAMA RAO Advocate [OPUC]
5. One CC to SRI. SRAVAN KUMAR MANNAVA Advocate [OPUC]
6. Three CD Copies

MSST

HIGH COURT

DATED:29/11/2024

ORDER

WP.No.24942 of 2022



DISMISSING THE WRIT PETITION WITHOUT COSTS