**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No.20309 OF 2008**

**ORDER:**

The writ petition is filed challenging the order dated 10.09.2008 passed by the 3rd respondent-Divisional Cooperative Officer whereby the petitioner came to be informed that on account of W.P.No.3829 of 2007 filed by the first respondent, the auction sale would not be proceeded with unless the case is disposed of.

It is the case of the petitioner that he is the highest bidder in the auction that was proposed to be conducted by the 2nd respondent for and on behalf of the 1st respondent-bank with respect to sale of mortgaged property of the respondents 5 and 6. Respondents 7 to 9 are the guarantors for the loan amount. The 1st respondent-bank filed the E.P.No.25/2003(A) before the 3rd respondent-Divisional Cooperative Officer/Sale Officer to enforce the arbitration award in A.R.C.No.88/02/CVB-GD. It is the further case of the petitioner that though he is the highest bidder and in spite of confirming the same, by collusion between the 1st respondent and the respondents 5 to 9, the auction was not proceeded with and thus the petitioner was entitled for an order to confirm the auction in his favour.

The writ petition is of the year 2008 and no counter-affidavits are filed by the respondents till 07.11.2015. Thereafter, the 1st respondent-bank filed a counter-affidavit on 27.11.2015 asserting that the E.P.No.25 of 2003 (A) came to be closed on account of the fact that the judgment debtors settled the loan account under one time settlement and thereby the property mortgaged to the bank was redeemed and in that view of the matter, the writ petition itself had become infructuous.

Heard Sri K. Laxmana Chary, learned counsel for the petitioner, Sri K. Gopala Krishna Murthy, learned counsel for the first respondent-bank and the learned Government Pleader for Cooperation (T.G).

The learned counsel for the petitioner on receiving the copy of the counter-affidavit filed by the first respondent-bank submitted that pursuant to the auction notice and in compliance with the terms of the auction proceedings, petitioner had deposited a sum of Rs.50,000/- on 10.09.2008 in the name of the first respondent-bank and the said amount is lying with the first respondent-bank since then and he seeks a direction to the first respondent-bank to refund the said amount with interest. Learned counsel for the petitioner further submits that the first respondent-bank objects for grant of any interest. Learned counsel for the petitioner specifically asserts that the payment of Rs.50,000/- was not denied by the first respondent-bank. Further, considering the fact that the petitioner was allowed to participate in the auction itself is a proof positive that such deposit had been made. In the very notice issued by the 2$^{nd}$ respondent, it was specifically mentioned that the security amount should be deposited in the name of the first respondent-bank. Granting of interest is specifically objected by the learned counsel for the first respondent-bank on the ground that it is the 2$^{nd}$ respondent who issued the sale notice and stipulated the conditions that the security amount be deposited with the first respondent-bank. Directing to deposit the security amount with the 1$^{st}$ respondent –bank was only incidental and the 2$^{nd}$ respondent could have specified any of the bank as well for depositing the money. In that view of the matter, learned counsel for the 1$^{st}$ respondent-bank while admitting that there is an obligation to refund the security deposit submits that there was no legal obligation on the part of the first respondent-bank to pay the interest to the petitioner on the amount of Rs.50,000/-.

Having considered the rival submissions and in view of the well settled principles that a mortgagor is entitled to redeem the property before the property is put to sale through legal process. Closing of the E.P on the ground of mortgagor settling the loan account cannot be found fault. In that view of the matter, the main relief claimed in the writ petition has become infructuous.

However, I am not inclined to accept the arguments of the learned counsel for the 1st respondent-bank that the first respondent-bank is not liable to pay interest on the security deposit which was lying with the first respondent bank. Through the impugned proceedings dated 10.09.2008, the 2nd respondent had intimated the petitioner that on account of W.P.No.3829 of 2007, the 2nd respondent is unable to proceed with the auction. It may be noted that the W.P.No.3829 of 2007 was filed by the first respondent-bank. Incidentally, the said W.P.No.3829 of 2007 was withdrawn by the first respondent-bank on 27.11.2015 stating that it has become infructuous. From the year 2008 till now, neither the 2nd respondent nor the first respondent-bank have chosen to refund the amount of Rs.50,000/-. In normal circumstances for whatever reasons if the auction is not being proceeded with, the amount deposited as a security deposit ought to have been returned to the participants immediately on cancellation of auction or atleast within a reasonable time. But that has not been done in this case. In that view of the matter, I am not inclined to accept the arguments of the learned counsel for the first respondent-bank that it is the responsibility of the 2nd respondent either to refund the money or to take steps to return the money as infact there was no claim by the petitioner before the first respondent or the second respondent for refund of the amount. The argument, to say the least, is unfair and ignoring the fact that the 2nd respondent is only acting as a sale officer of the first respondent-bank and for and on behalf of the first respondent-bank for the benefit of the first respondent as Executing Officer in the process of recovery of the amount by implementing the arbitration award. It is need less to mention even in normal circumstances, the expenses in relation to execution of the recovery proceedings are required to be borne by the first respondent as the second respondent is only acting as an executing agent for and on behalf of the first respondent. In other words, the first respondent being the beneficiary ought to have taken the responsibility for refunding the money as the auction having been cancelled. Even in terms of equity, first respondent being a lending bank had the benefit of Rs.50,000/- which in normal circumstances would have put in circulation for earning the interest. In that view of the matter, in terms of the well settled principles of restitution as recognised by the Supreme Court in the case of **Kerala State Electricity Board vs. M.R.F. Limited & others**[1] the first respondent as a banker had the benefit of enjoying the money of the petitioner for all these years and they have the obligation to compensate the petitioner. In that view of the matter, there shall be a direction to the first respondent-bank to refund the amount of Rs.50,000/- (Rupees fifty thousand only) with interest as applicable to the fixed deposit receipts from 10.09.2008 till the date of payment.

With the above observations, the writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

**CHALLA KODANDA RAM, J.**

Date:07.12.2015.
Gk.

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

-
-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

**WRIT PETITION No.20309 OF 2008**

-
-
-

**Date:07.12.2015.**

Gk.

---

[1] (1996) 1 SCC 597