

HONOURABLE SRI JUSTICE RAJA ELANGO

-

WRIT PETITION NO:11479 OF 2009

ORDER:

1. This writ petition is filed by the petitioner-borrower challenging the judgment dated 30.4.2009 passed in O.A.No.15 of 2008 by the A.P. Co-operative Tribunal, Visakhapatnam.

2. The petitioner, who is the member of the 3rd respondent-Society, availed loan of Rs.1,25,000/- agreeing to repay the same in 120 monthly instalments commencing from 30.11.2000 with interest at the rate of 19.5% p.a. As the petitioner committed default in repayment of the loan amount, the 3rd respondent raised a claim before the 2nd respondent and obtained a decree for Rs.2,36,711/- with further interest at the rate of 21.5% p.a., with costs, from 17.11.2003. On coming to know about the arbitration proceedings and the sale notice, the petitioner approached the Tribunal by filing O.A.No.15 of 2008. In the meantime, the 4th respondent, who participated in the auction, became the highest bidder in the sale conducted on 6.2.2008 for an amount of Rs.4,00,000/-. However, the entire bid amount was not paid except 15% i.e.,60,750/-. Meanwhile, in O.A.No.15 of 2008 filed by the petitioner-borrower, the Tribunal granted stay of all further proceedings. Ultimately, the Tribunal dismissed the O.A. Hence, the petitioner-borrower approached this Court.

3. On 12.6.2009 while admitting the writ petition, this Court granted interim stay of all further proceedings including the confirmation of sale in pursuance of the Sale Notice in CEP No.509/03-04, dated 1.1.2008, on condition of the petitioner depositing a sum of Rs.2,00,000/-.

4. During the course of arguments, it is informed by the Counsel on record that their lordship Sri Justice A.V. Sesha Sai directed both the parties to file calculation memos since the dispute is only in connection with the interest. In pursuance of the said direction, the learned Counsel for the petitioner as well as the Counsel appearing for the 3rd respondent-Society filed calculation memos.

5. As per the calculation memo filed by the petitioner, the amount due to be paid by him to the Society is Rs.3,13,897/- whereas according to the 3rd respondent-society, it is Rs.6,19,439/-. The petitioner filed the memo calculating the interest at the rate of 21.5% whereas the 3rd respondent calculated the interest at the compound rate.

6. It is also brought to the notice of this Court that the petitioner-borrower has already complied with the orders of this Court, dated 12.6.2009 by depositing an amount of Rs.2,00,000/- .

7. Considering the facts and circumstances of the case and in view of the deposit of Rs.2,00,000/- by the petitioner in compliance of the orders of this Court dated 12.6.2009, without expressing any opinion on the merits of the case, the Writ Petition is disposed of with the following direction:

“The petitioner is directed to pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) to the 3rd respondent-Society towards full and final settlement in addition to the amount already paid, and also to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards legal expenses incurred by the 3rd respondent-society, within a period of two months from the date of receipt of a copy of this order.

On payment of the aforesaid amount towards full and final settlement, the sale proceedings in respect of the property of the petitioner shall stand set aside.”

Consequently, the miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Date:18.3.2015

NN

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION NO:11479 OF 2009

DATED:18.3.2015.

Nn