

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27391 of 2011

ORDER:

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With the consent of both the parties, the main writ petition is disposed of at the admission stage.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

The present writ petition is filed seeking issuance of a writ of mandamus declaring the impugned auction notice dated 19.09.2011 published in Saakshi Telugu Daily Newspapers by the second respondent proposing to conduct auction of the petitioner's property bearing D.No.48-16-11, Gundala, Nagarjuna Nagar, Vijayawada, Krishna District, without considering the representation dated 29.07.2011 seeking time for payment of the outstanding loan, as illegal and arbitrary; and consequently direct the respondents to consider the representation dated 29.07.2011.

The averments in the affidavit filed in support of the writ petition are as under:

The petitioner obtained housing loan of Rs.14,00,000/- from the respondents and he has been paying the loan instalments regularly. It is averred that in all, the petitioner paid the loan amount of Rs.11,25,000/- as on 16.06.2011. Thereafter, the petitioner approached the second respondent to furnish the true and correct statement of account, but the same was refused. It is stated that the enquiries made by the petitioner reveal that the second respondent bank though sanctioned loan of Rs.14,00,000/- it was mentioned in the records as Rs.18,00,000/-. While things stood thus, on 27.07.2011 a notice was served on the petitioner alleging that he has committed default and

demanding to pay the outstanding due of Rs.15,24,229/- within 60 days, failing which the authorities proposed to take coercive steps for recovery of the due amount. On receipt of the said notice, the petitioner approached the second respondent and submitted a representation dated 29.07.2011 requesting time for payment of the entire loan amount under one time settlement. Instead of considering the said representation, the second respondent issued impugned auction notice proposing to conduct auction of the property on 19.10.2011. Hence, the present writ petition.

On 29.09.2011 while issuing notice before admission, this Court passed the following order:

“Notice before admission returnable in four weeks. The petitioner submits that he is willing to liquidate the entire outstanding amount of Rs.18,54,084/- on or before 15.12.2011. If the petitioner deposits the entire amount of Rs.18,54,084/- on or before 15.12.2011, the first respondent-bank shall not confirm the auction in favour of any third party. In case the petitioner commits any default in making the said payment, it is open to the first respondent-bank to take such steps and measures that are considered appropriate and necessary without any further reference to this Court.”

At the time when the matter is taken up for hearing, the learned counsel for the petitioner submitted that he has no instructions as to whether the petitioner has complied with the interim order or not. Though number of opportunities were given to the counsel for the petitioner to find out as to whether the petitioner has complied with the interim orders dated 29.09.2011 or not, but would not do so as he is not in a position to contact his client.

Having regard to the circumstances of the case and without going into the merits of the case, the writ petition is disposed of directing the respondents to consider the representation dated 29.07.2011, if the same is still pending and pass orders in accordance with law, provided

the petitioner has complied with the interim order dated 29.09.2011 passed by this Court. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.08.2015

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