

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.26840 OF 2008

ORDER:

Heard learned counsel Ms. G. Sindhu, representing on behalf of Sri K. Chidambaram, learned counsel for the petitioners.

The Writ Petition is filed questioning the auction notice dated 31.10.2008 issued by the 1st respondent-Deputy Registrar of Cooperative Societies, Bhimavaram, proposing to auction the house property in 60 Sq.Yards of site situated in H.No.45-3-28, Assignment No.13119 of Velamagudem Village, Palakol Municipal Area of West Godavari District, for recovery of Rs.2,19,591/-.

It is the case of the petitioners that the 1st petitioner is son and petitioners 2 and 3 are the daughters of one late Ganeswara Rao. Late Ganeswara Rao alleged to have borrowed a sum of Rs.50,000/- from the 2nd respondent-Bank vide Loan No.4292, dated 09.12.1997 by mortgaging the property in question and as he failed to pay the said amount an Award No.222 of 2000-2001 was made under Section 71 of the Cooperative Societies Act (in short "the Act") on 25.04.2001, for a sum of Rs.2,06,194/-. It is the contention of the petitioners that at the time when the mortgage was made the petitioners were minors and as a matter of fact petitioners' father had only 1/5th share in the property on account of the registered partition deed No.2546/1987, dated 22.07.1987, and the property is ancestral property, and the petitioners themselves are the shareholders in the property. In that view of the matter, even assuming the petitioners' father had borrowed money, he could not have mortgaged the entire property for the loan as petitioners' father has only 1/5th share in the said property. Learned counsel for the petitioners also submits that

O.S.No.397 of 1998 was filed by one P. Antharvedi against their father and a decree came to be passed in the said suit and in E.P.No.75 of 1999 the property was sought to be brought on sale and the attachment was ordered, thereafter, they filed a claim petition in E.A.No.5 of 2000 basing on the partition deed and the E.P. was stalled and the property was not brought to sale by the Junior Civil Judge, Palakollu by raising the attachment. Raising these grounds learned counsel urged that the auction notice may be set aside and declare that the respondents do not have any right to auction the property.

Sri Poliseti Radha Krishna, learned counsel appearing for the respondent-bank by making a reference to the counter affidavit would submit that the petitioners' father borrowed a amount of Rs.50,000/- on 09.12.1997 and executed a bond to pay said sum in 35 instalments with interest as applicable. The petitioners' father being natural guardian had executed mortgage bond on behalf of the petitioners as a whole and as such the mortgaged bond executed by the petitioners' father is valid. As a matter of fact, petitioners themselves on attaining the majority have acknowledged the debt due to the Bank, therefore, the 2nd respondent has every right to take appropriate legal remedies against the petitioners and proceed against the schedule property on which the respondent-bank has got first charge by virtue of mortgage bond No.4522/97, dated 02.12.1997. Further, he submitted that the auction which was proposed through the impugned notice was not conducted and even as on date the execution proceedings have not been proceeded.

Having considered the rival submissions, I am unable to persuaded with the arguments of the learned counsel for the petitioners on account of the fact that the petitioners being minors at

a relevant point of time the bank cannot proceed against the mortgage property. Even assuming that the petitioners have any independent right in the property by virtue of the partition deed dated 22.07.1983, it is for them to make a claim before the authorised officer / sale officer under Rule 52 of the A.P. Cooperative Rules, which is self-contained code to consider the objections of the nature which the petitioners seek to raise in the present writ petition. But the petitioners have directly approached this Court without availing the opportunity provided under the Act. Allowing of the petitioners' claim petition in E.A.No.5 of 2000 has also no relevance except to the extent that the petitioners have independent interest in the property. Further, the petitioners, after attaining the majority, did not choose to assert their right within the time prescribed, by questioning the mortgage made by their father. It is not being disputed that the Award dated 25.04.2001 was made in exercise of the statutory power under Section 71 of the Act. In that view of the matter, there are no merits in the writ petition. However, considering the fact that the very auction, proposed to be conducted, has not been conducted, the writ petition is disposed of by giving liberty to the petitioners to raise all their contentions, including the one which they raised in the present writ petition, before the sale officer under Rule 52 of the Cooperative Societies Rules. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE CHALLA KODANDA RAM

Date:30.12.2015

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