

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.6135 of 2008

ORDER:-

This writ petition is filed challenging the auction notice dated 18.02.2008 in E.P. No. 140/2002-2003 issued by the first respondent - The Deputy Registrar – Officer on Special Duty, District Cooperative Central Bank Limited, Visakhapatnam.

2. Heard Sri V.V.N.Narayan Rao, learned counsel for the writ petitioner and the learned standing counsel for the second respondent bank.

3. The contention of the petitioner is that the petitioner is the guarantor to the loans borrowed by the third respondent from the second respondent bank and as the third respondent defaulted in repayment of the loans borrowed by him from the second respondent bank, proceedings under Section 71(3) of the Andhra Pradesh Cooperative Societies Act, 1964 ('the Act', for brevity) were initiated against the petitioner. Thereafter, a certificate under Section 71(3) of the Act was issued on 28.09.2001, wherein, the third respondent, along with the other guarantors, was jointly and severally made liable for payment of a sum of Rs.16,98,870/- along with interest at the rate of 21.5% per annum. Challenging the same, the present writ petition is filed.

4. The only ground urged by the learned counsel for the petitioner is that the first respondent failed to follow the due procedure prescribed under Rule 52 of the A.P. Cooperative Societies Rules, 1964 ('the Rules', for brevity) in issuing notice to him.

5. The learned standing counsel for the second respondent bank, while bringing to the notice of this Court the order dated 24.06.2011 of

this Court passed in W.P.No.7324 of 2008, would submit that this Court has set aside the auction notice issued against another guarantor by name K.Sreenivasa Rao (the writ petitioner therein) on the similar ground. She would also contend that impugned notice may be set aside but an opportunity may be given to the second respondent bank to proceed with the execution proceedings by strictly following the procedure prescribed under the Rules.

6. Perused the record and the order dated 24.06.2011 of this Court passed in W.P.No.7324 of 2008. The order dated 24.06.2011 of this Court would reveal that with respect to the same auction proceedings, this Court, by specifically rejecting the contention on behalf of the second respondent bank, had come to the conclusion that there was violation of the procedure prescribed under the Rules by the respondents in proposing to conduct auction and thus, allowed the writ petition by setting aside the execution proceedings initiated by the second respondent bank for not following the due procedure prescribed under Rule 52 of the Rules.

7. In that view of the matter, this writ petition is allowed by setting aside the impugned auction proceedings, giving liberty to the second respondent bank to initiate execution proceedings against the petitioner afresh in accordance with the procedure prescribed by law. There shall be no order as to costs.

8. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

29th December, 2015
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