IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION Nos.22833 of 2014

Between:

M/s. New Vijayalaxmi Oil Extraction

and Refinery Private Limited

Kothur Village, Mahabubnagar District

Rep. by its Managing Director Sri Bajrang Prashad Agarwal

.. Petitioner

and

Registrar of District

Divisional Cooperative Officer

Secunderabad Division, and others

.. Respondents

DATE OF ORDER PRONOUNCED: **14.10.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers **Yes**

may be allowed to see the Judgments?

2. Whether the copies of judgment may be **No**

marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to **No**

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.22833 of 2014

ORDER:

The petitioner is a private limited company running oil industry. It acquired certain landed property in Kothur Village, Kothur Mandal of Mahabubnagar District. It obtained financial assistance from the fourth respondent and for the said purpose it mortgaged the immovable property in favour of the said Bank. While so, the first respondent issued a notice on 30.09.2013 in Form No.8 under Rule 52 (11)(e) of the A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules') proposing to sell the mortgaged property for realisation of dues to the fourth respondent. The date of sale was fixed as 31.10.2013. The second respondent published another public notice on 18.07.2014 reducing the upset price from Rs.354.24 lakhs to Rs.185.00 lakhs and divided the property into two parts. The date of sale was fixed as 31.07.2014. Challenging the same, the present writ petition was filed.

The second respondent filed a counter affidavit stating that the writ petition is liable to be dismissed as the petitioner did not implead the fourth respondent, the decree holder in E.P.No.113/2009 and the same was done in order to prevent the fourth respondent from bringing the correct facts to the notice of this Court. It is further stated that the petitioner suppressed the fact of filing earlier writ petition in W.P.No.3861/2012. Though an order was passed in the said writ petition directing the petitioner to deposit Rs.50 lakhs within four weeks from 14.02.2012 as a condition for staying the auction and the said order was extended by another three weeks by order dated 16.03.2012, the petitioner did not comply with the same and after conducting the auction of the property, the present writ petition was filed by suppressing the pendency of the writ petition. The auction was held on 31.07.2014 and hence, in view of the availability of alternative remedy of filing objection petition before the first respondent under Rule 52(14) of the Rules, the writ petition is liable to be dismissed. The petitioner is not running any oil industry as stated in the affidavit and no activity took place as on the date of filing of the writ petition. It is further stated that the first respondent fixed the upset price at Rs.3,54,24,000/- for the entire land of an extent of Ac.5.06 guntas i.e., 22,684 square metres or 27130.13 square yards, but not for the property sold in auction dated 31.07.2014, which is for the lesser extent. The sale notice was served by the second respondent on the petitioner on 30.09.2013 and the petitioner himself acknowledged the receipt of the same. The petitioner also participated in the auction proceedings on 31.10.2013 and informed that an extent of Ac.4.00 guntas, out of total mortgaged extent of Ac.5.06 guntas, was sold by the Debts Recovery Tribunal (for short, 'the DRT'), Hyderabad, in public auction conducted in pursuance of R.P.No.201/2002 and the sale proceeds were appropriated towards dues to the South Indian Bank. The said fact was stated to have been ascertained by the second respondent by addressing a letter to the Recovery Officer, DRT, Hyderabad, on 10.03.2014. The sale notice was issued on 27.06.2014 and was affixed on 28.06.2014 at the Office of the Registrar of the District (DLCO, Secunderabad Division) and also on 30.06.2014 in the Office of Tahsildar, Kothur Mandal, Mahbubnagar District, in compliance with Rule 52(11)(e) of the Rules. The same was published on 20.07.2014 in Deccan Chronicle English Daily newspaper and on 22.07.2014 in Eenadu Telugu daily. After inspecting the record pertaining to R.P. No.201/2002, it was found that an extent of Ac.4.00 guntas was sold in auction. In view of the same, the said property was divided into two bits, one consisting of land to an extent of 6,393.70 square yards and the other consisting of Ac.3.34 guntas and the upset price was re-determined separately. The upset price of the land was shown as Rs.95,58,000/- for the first bit and the upset price for the second bit was shown as Rs.90 lakhs. The value calculated per square yard was same in the first sale notice dated 30.09.2013 as well as the second sale notice dated 27.06.2014. The petitioner never raised any objection to the valuation of the property. The petitioner was present on the date of sale on 31.07.2014 and the present writ petition was filed only to protract the proceedings. The property can be auctioned wholly or any portion as per Rule 52(16) of the Rules, and therefore, the sale was conducted in respect of the available land. The sale notice dated 27.06.2014 was sent to the petitioner and others, who are none other than the family members of the petitioner and the judgment debtors in the above E.P. and they have received notices, but the notice sent to the petitioner was returned unserved. The petitioner also refused to receive the sale notice dated 27.06.2014 and the second respondent tried to serve the same to him in person. In the above circumstances, the notice was affixed on the door of the petitioner in the presence of witnesses on 01.07.2014 so also on the conspicuous part of the subject property. The petitioner had knowledge of issuance of the sale notice dated 27.06.2014. The company's property is in a dilapidated condition. The objections to the sale were sent by means of a courier on 30.07.2014 and it is an afterthought.

The third respondent filed a separate counter affidavit raising an objection to the filing of case by the Managing Director of the company without a supporting resolution from the company. The third respondent is a successful bidder and paid an amount of Rs.14,46,000/- on the date of sale i.e., 31.07.2014 and Rs.81,94,000/- on 14.08.2014. Thus, the entire amounts were paid. The property was divided into two parts since a part of the property was sold by DRT in pursuance of the order in R.P.No.201/2002 in O.A. No.923/2001.

The fourth respondent filed a separate counter affidavit stating that the fourth respondent is a proper and necessary party to the writ petition as the property was put to sale for recovering the amount due to the bank.

A rejoinder is filed by the petitioner to the counter affidavit filed by the fourth respondent stating that since the bank was under liquidation, it was not made a party to the writ petition. It is further stated that the actual loan amount availed from the bank was Rs.55,38,000/-, but the bank had obtained an award for Rs.86,63,767/- and raised a demand in E.P. to the tune of Rs.5,33,52,769/-.

The Bank never served notice of sale fixing the date of auction as 10.07.2013. In respect of another sale notice also, no notice was served on the petitioner. The petitioner has taken unsecured loan from the South Indian Bank in the year 1976, which was subsequently repaid, but however the said Bank, by miscalculating the figures approached the Hon'ble DRT and filed the recovery proceedings against the petitioner, in which a part of property was auctioned. The documents relating to the said property are with the fourth respondent, but the fourth respondent never took any action for protecting the mortgaged assets. The petitioner obtained the market value certificate from the concerned Department for the left over property, which is valued at Rs.231 lakhs, and it is inclusive of the structures. But, the fourth respondent fixed the sale price at Rs.95 lakhs, which is less than half of the actual government value.

Learned Senior Counsel Sri L.Ravichander, appearing for the petitioner, submitted that the property was not mortgaged to the Bank and no notice was issued before putting the said property to sale, even otherwise also the division of the property into two bits is illegal as it is violative of Rule 52(11) of the Rules. He relied on the decisions of the Supreme Court in **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar** and **Arunima Baruah v. Union of India.**

Learned counsel for the second respondent relied on the following decisions:

i. **U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.**

ii. **Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of Uttar Pradesh**

iii. **M/s. Kayjay Industries (P) Ltd. v. M/s. Asnew Drums (P) Ltd.**

iv. **Saheb Khan v. M/s. Mohd. Yousufuddin**

v. **A.V. Papayya Sastry v. Govt. of A.P.**

vi. **Meghmala v. G.Narasimha Reddy**

and submits that the sale was in compliance with the Rules only and has to be held valid.

Learned counsel for the third respondent submitted that pursuant to the sale he deposited the entire sale amount and the amount is lying with the second respondent. He relied on a decision of **M.Krishna v. A.P. Co-operative Tribunal, Hyderabad**.

On 08.08.2014, this Court, while admitting the writ petition, directed the petitioner to deposit an amount of Rs.30 lakhs before the second respondent within four weeks, while opining that the reduction in upset value from Rs.354.24 lakhs to Rs.185.58 lakhs was arbitrary and accordingly granted interim stay of confirmation of the sale. The petitioner did not comply with the order dated 08.08.2014 and filed W.P.M.P.No.32103/2014, seeking extension of time by four more weeks and this Court passed an order on 04.09.2014 extending the time by a further period of four weeks. Thereafter, the petitioner complied with the order dated 08.08.2014 by depositing an amount of Rs.30 lakhs before the second respondent on 05.09.2015.

As per the averments made in W.P.No.3861/2012, the Managing Director of the petitioner company admitted that he availed loan from the fourth respondent Bank in the name of two companies viz., Nandi Fabrics Private Limited and New Vijayalakshmi Oil Extraction and Refinery Private Limited in the year 1998. The loan for Nandi Fabrics Private Limited was to the tune of Rs.115 lakhs and for New Vijayalakshmi Oil Extraction and Refinery Private Limited, it was Rs.55 lakhs; thus, the total loan availed by him was Rs.170 lakhs by the two companies. He paid an amount of Rs.2 Crores towards the said loans. Thereafter, he received a letter from the Bank on 24.11.2009 to pay a further amount of Rs.80 lakhs with respect to the said loan within one week. He also availed another loan of Rs.90 lakhs in the year 1997 and paid an amount of Rs.2 Crores as on 30.07.2010. Thus, he paid the total amount of Rs.4 Crores by 30.07.2010. While so, he received notices under Rule 52(11)(e) of the A.P. Cooperative Societies Act from the fourth respondent Bank on 29.12.2011 proposing to auction the immovable properties fixing the date of auction as 08.02.2012. The said notices were issued pursuant to the order in E.P.No.113/2009 and E.P.No.114/2009. Stating that the petitioner was not aware of the said proceedings and requested for one time settlement, he filed

W.P. No.3861/2012 in his individual name. Though an order was passed on 14.02.2012 to deposit an amount of Rs.50 lakhs in the said writ petition, in spite of granting extension by three weeks on 16.03.2012, the petitioner did not comply with the same. The said writ petition was dismissed as infructuous on 03.09.2015.

Now the petitioner submits that he did not mortgage any property and in view of the said submission, the record was called for. The record discloses that pursuant to the application filed by the petitioner on 03.03.1998 offering collateral securities of land in Plot Nos.28, 29, 30 and 32, I.D.A., in Survey No.103 situated at Kothur Village, Kothur Mandal, Mahabubnagar District, and also furnishing third-party guarantees of the wife of Managing Director and daughter-in-law, an amount of Rs.56 lakhs was sanctioned in the Board Meeting held on 26.03.1998 and the Director executed a Demand Promissory Note. Agreement was executed by the Managing Director, Director and the guarantors in favour of the Bank on 30.03.1998 for the overdraft facility of Rs.55,38,000/- for the purpose of working capital to the unit. It was supported by the guarantees executed by the four parties. The Managing Director executed the document on 03.04.1998 stating that he has already deposited in the Bank on 02.04.1998 a sale deed, in respect of plot Nos.28, 29, 30 and 32 situated at I.D.A., Kothur Village, Mahabubnagar District, covered by document No.327/1998 and it was submitted for creating the equitable mortgage for the security to the moneys payable. A letter of hypothecation was also executed on 02.04.1998. In view of the same, it cannot be said that no property was mortgaged in respect of the loan amount.

It appears that the fourth respondent filed O.P.No.6/2000 for recovery of Rs.86,63,767.50 ps and the said O.P. was allowed after setting the respondents *ex parte* by order dated 29.08.2006. An order was passed against the respondents for Rs.86,63,767.50 ps with costs and future interest @ 22% per annum from the date of petition till realisation recoverable from the respondents and against the mortgaged property recoverable from the respondents jointly and severally. It was also directed to sell the mortgaged property for realisation of the decretal amount and time of three months was given for redemption. With respect to the sale notice, a sale notice dated 27.06.2014 was affixed to door No.301, Sreenilayam, H.No.4-2-1071, Ramkote, Hyderabad on 01.07.2014. A sale notice was also put up on the notice board of the Divisional Cooperative Officer, Chief Commissioner & Registrar of Cooperative Societies, Tahsildar, Sub-Registrar Office, Shadnagar on 28.06.2014 and 30.06.2014 respectively. Notices were sent by registered post as could be seen from the postal receipts filed on 01.07.2014. The Managing Director acknowledged the receipt of sale notice dated 27.06.2014 on behalf of six parties. Notices sent on 01.07.2014 were returned unserved.

In reply to the allegation that the petitioner suppressed the material facts, learned Senior Counsel appearing for the petitioner relied on the decision of **S.J.S. Business Enterprises (P) Ltd** (supra). The said decision was followed in a subsequent decision in **Arunima Baruah**'s case (supra) wherein it was held that the facts suppressed should be material.

In the case of **S.J.S. Business Enterprises (P) Ltd** (supra), the company was sanctioned a sum of Rs.70 lakhs by Bihar State Industrial Credit and Investment Corporation Limited' (BICICO) for construction of a hotel. Proceedings were taken by BICICO under Section 29 of the State Financial Corporations Act for sale of the hotel, which was mortgaged by the said borrower by way of security against the loan. The property was purchased by a third party purchaser. After sale of the property, a suit was filed by the borrower challenging the action of BICICO. The application for interim relief was rejected by a Civil Court. On the next day, a writ petition was filed by the borrower for the same relief as prayed in the suit. An interim order was passed by the learned single Judge subject to certain conditions. The writ petition was ultimately dismissed on the ground that the borrower suppressed the fact of filing a suit prior to initiation of the writ proceedings. The Division Bench also dismissed the Writ Appeal. In the facts and circumstances of the above case, the Supreme Court held as follows:

> "**13**. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken. Thus when the liability to Income Tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed. Again when in

earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order.

14. Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226 . But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If, however, a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226, it would not be appropriate for the Court to entertain the writ petition. The rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court. But this Court has also held in *Chandra Bhan Gosain v. State of Orissa* [(1963) 14 STC 766] that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226. Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits.

15. In this case, admittedly the appellant has withdrawn the suit two weeks after the suit had been filed. In other words, the appellant elected to pursue its remedies only under Article 226. The pleadings were also complete before the High Court. No doubt, the interim order which was passed by the High Court was obtained when the suit was pending. But by the time the writ petition was heard the suit had already been withdrawn a year earlier. Although the appellant could not, on the High Court's reasoning, take advantage of the interim order, it was not correct in rejecting the writ petition itself when the suit had admittedly been withdrawn, especially when the matter was ripe for hearing and all the facts necessary for determining the writ petition on merits were before the Court, and when the Court was not of the view that the writ petition was otherwise not maintainable."

Accordingly, the decision of the High Court was set aside, the writ petition was allowed and the sale of hotel to the third party was also set aside.

In **Arunima Baruah**'s case (supra), the Supreme Court considered the issue as to how far and to what extent the suppression of fact by way of non-disclosure would affect the person's right of access to justice. The appellant before the Supreme Court was an employee of Indian Council for Child Welfare and she filed a suit in the District Court challenging her termination of services. No order of interim injunction was passed, but a notice was issued to the defendant in the suit. She filed a writ petition before the Delhi High court without disclosing the fact of pendency of the suit. Before the writ petition came up for hearing, the suit was withdrawn. The writ petition was dismissed by the learned single Judge and the said order was confirmed by the Division Bench. Learned counsel appearing for the employee, by relying on the case of **S.J.S. Business Enterprises (P) Ltd.** (supra) contended that the writ petition should not have been dismissed in view of the withdrawal of suit by the date of hearing of the writ petition. The Court held as follows:

> "**12**. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

The Court also relied on **Moody v. Cox, Halsbury's Laws of England**, 4th Edition, Vol. 16, and **Spry on Equitable Remedies,** 4th Edition and **S.J.S. Business Enterprises (P) Ltd's** case (supra) and holding that the suppression of the filing of suit was no longer a material fact, ultimately held as follows:

> "**22**. In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, and the court at that point

> of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice, and keeping in view the fact that judicial review is a basic feature of the Constitution of India."

In the instant case, the petitioner did not file any suit, but filed W.P. No.3861/2012 and the same was dismissed as infructuous only on 03.09.2015. The pendency of the said writ petition was not disclosed in the present writ petition. In fact, when an interim order was passed in the said writ petition, the same was not complied with by the petitioner. By suppressing those proceedings, the present writ petition is filed and got an order on 08.08.2014. In view of the same, the ratio laid down by the Supreme Court in the above decisions is not applicable.

On the other hand, the learned counsel for second respondent relied on the decisions of **A.V. Papayya Sastry** (supra) and **Meghmala** (supra) and submitted that the fourth respondent was not made a party and the fact of filing of an earlier writ petition by the Managing Director of the company was also not disclosed in the present writ petition.

In the case of **A.V. Papayya Sastry** (supra), the Supreme Court was dealing with a case of fraud and the said decision is not applicable to the facts and circumstances of the present case. The case of **Meghmala** (supra) is also one which dealt with fraud and it is also equally not applicable to the facts of the present case. In the case of **Saheb Khan** (supra), the three Judge judgment of the Supreme Court held that in order to set aside the sale, the conditions must be satisfied under Order 29 Rule 90 (1) and (2) CPC; the said conditions are (i) establishing the material irregularity of fraud, and (ii) establishing the satisfaction of the Court that the material irregularity or fraud had resulted in substantial injury to the applicant. Fulfilling of only one of the said two conditions was held not sufficient.

The other decisions cited by the learned counsel for second respondent are not applicable to the facts and circumstances of the present case.

Learned counsel for the third respondent relied on a decision of **M.Krishna** (supra) wherein the learned single Judge of this Court was dealing with a case of sale under the provisions of the A.P. Cooperative Societies Act. In the said case, the fourth respondent borrowed a sum of Rs.25.00 lakhs from the fifth respondent and committed default. The fifth respondent Bank initiated proceedings for recovery of the amount and obtained an award. The fourth respondent challenged the same before the Cooperative Tribunal. The Tribunal granted an order of conditional stay and the condition was not complied with. The Bank initiated execution proceedings and the mortgaged property was put to sale. The fourth respondent filed a writ petition challenging the auction notice and on recording an undertaking of the fourth respondent the sale was initially held up. Later the sale in favour of the petitioners was confirmed and a sale certificate was issued on 10.02.2003. Challenging the same, the fourth respondent again filed an appeal before the Tribunal and the Tribunal set aside the sale certificate. The learned single Judge set aside the order passed by the Tribunal by holding as follows:

> "**23**. As observed earlier, the procedure prescribed under Rule 52 is broadly similar to the one under Order 21 C.P.C. In Radhey Shyam v. Shyam Behari Singh [AIR 1971 SC 2337], the Supreme Court held that it is only when the judgment debtor suffers any injury to his rights, that execution of sale can be interfered with, and not where no such injury is proved. The relevant passage reads as under:
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> Mere proof of a material irregularity such as the one under Rule 69 and inadequacy of price realized in such a sale, in other words injury, is, therefore, not sufficient. What has to be established is that there was not only inadequacy of the price but that inadequacy was caused by reason of the material irregularity or fraud. A connection has thus to be established between the inadequacy of the price and the material irregularity.
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> **24**. This principle was applied by this Court in V.V. Narayan Chetty v. Nenla Dhanamma and Anr., [AIR 1984 Andhra Pradesh159]. The procedure under Rule 52 is less vigorous compared to the one under Order 21 C.P.C., because of the reason that the transactions between the Societies and its members are properly secured. On an examination of the facts of the present case, it emerges that the fourth respondent was afforded with several opportunities by the Tribunal, this Court, and on several occasions, by the Bank itself, to pay the amount. He did not avail the facility extended to him by this Court in W.P. No. 15814 of 2002. He did not exhibit any bona fides on his part in complying with the orders secured by himself. He cannot plead his own defaults and lapses to set at naught the execution proceedings. The appeal preferred by the fourth respondent against the Award is also said to have been dismissed. He may be having his own difficulties in paying the amount. However, once the loan transaction was secured and the proceedings were initiated in accordance with the provisions of the Act and the Rules, they cannot be protracted unendingly. The petitioners have deposited the entire sale consideration and this Court does not find any material irregularity in the sale. The Tribunal adopted too technical an approach in the proceedings and set aside the sale."

In the instant case also, the petitioner through its Managing Director filed W.P. No.3861/2012. Though an order was passed on 14.02.2012 to deposit an amount of Rs.50 lakhs and granting extension of time on 16.03.2012, the petitioner did not comply with the said order. However, in the present writ petition, the interim order dated 08.08.2014 was complied with by depositing Rs.30 lakhs belatedly after granting extension of time on 04.09.2014. Learned Senior Counsel appearing for the petitioner could not show how the sale in favour of the third respondent can be held bad. The record reveals that the property was mortgaged and appropriate notice was issued. The division of the property was necessitated due to sale of a part of the property. The Managing Director of the petitioner company participated in the auction held on 31.07.2014 and though he had an opportunity to submit the objections then and there, he merely asked for postponement of auction on the ground that one of the parties had offered Rs.1.50 Crores and there is a huge difference of Rs.60 lakhs. No other objection was filed even though he was armed with several objections as could be seen from the representation sent through courier dated 30.07.2014. The affidavit filed in support of the petition does not disclose any valid grounds for setting aside the same except dealing with the reduction of the upset price. The reduction of upset price took place due to reduction in total extent of the property as a part of the property was already sold pursuant to the order passed by the DRT.

In the light of the above, this Writ Petition is liable to be dismissed and is accordingly dismissed. It is needless to observe that the amount of Rs.30 lakhs deposited pursuant to the interim order of this Court shall be refunded to the petitioner forthwith.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

A.RAMALINGESWARA RAO, **J**

Date: 14-10-2015

MVA