

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.23731 of 2008

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Between:

G. Chandrakala

PETITIONER

AND

1. The Assistant Registrar of Cooperative Societies-cum-Sales Officer, Andhra Pradesh Cooperative House Building Society, Kadapa, Kadapa District, and another.

RESPONDENTS

ORDER:

This writ petition is filed alleging that the respondents are interfering with the peaceful possession and enjoyment of the petitioner's residential house bearing D.No.9/52 (F), Srinivasanagar, Mannur Village, Rajampet Mandal, Kadapa District, under the guise of recovery of loan granted by them, without furnishing the particulars of the amounts payable to them.

The case of the petitioner is that she purchased a residential house bearing D.No.9/52 (F), Srinivasanagar, Mannur Village, Rajampet Mandal, Kadapa District under a registered sale deed dated 25.04.1997 and approached the 2nd respondent for financial assistance. The 2nd respondent, considering the eligibility of the petitioner, by mortgaging the subject house granted a sum of Rs.1,25,000/- as loan, for a scheduled period of 15 years with interest payable at 12.5% p.a., retaining the original sale deed with it. The 1st respondent issued sale notice stating that he has obtained a decree against the petitioner for a sum of Rs.1,47,844 + Interest and other expenses, and hence the subject house was sought to be auctioned on 12.05.2008 for recovery of decretal amount. The grievance of the petitioner was that though she had paid substantial amounts to the 2nd respondent-society the respondents resorted to auction the property. She filed an application dated 15.10.2008 before the 2nd respondent-society under the provisions of Right to Information Act, 2005, along with requisite fee, seeking to furnish statement of account relating to the loan account, but no information has been furnished so far, instead, the 2nd respondent is interfering with her possession and enjoyment of the property. Challenging the same, the present writ petition is filed.

This Court issued Rule Nisi on 03.03.2009. In response to the notice, respondents 1 and 2 filed separate counter affidavits.

The 2nd respondent in its counter categorically stated that on account of the default committed by the petitioner in repaying the loan amount, the 2nd respondent-society has initiated arbitration proceedings claiming an amount of Rs.42,872/- against the petitioner and obtained Award dated 10.04.2006. Thereafter, Execution Petition has been filed for recovery of amount due. Thereafter, the property under mortgage has been put for sale by issuing form 6 and 7 and form 8 and 9 under Rule 52 (11) (e) of the A.P. Cooperative Societies Rules, 1964 in E.P.No.269 of 2006 and 2007 for recovery of Rs.1,66,806/-. It is alleged in the counter that the petitioner resorted for fabrication of receipts by tampering the amounts.

The 1st respondent also filed counter affidavit stating that as per the record the petitioner had paid a sum of Rs.30,000/- on 07.07.2007 and Rs.30,000/- on 11.12.2007 but the petitioner had stated in the writ affidavit that he has paid an amount of Rs.10,000/- on 10.12.2002 and Rs.70,000/- on 24.02.2005, contrary to the facts on record. Hence, it is for the 2nd respondent to state how much amount was received by it towards repayment of loan.

Learned counsel for the petitioner fairly submits that he has no instructions from his client about passing of Award in the Arbitration proceedings and also pendency of E.P. proceedings. However, he asserts that the petitioner is still in possession of the property and the property has not been sold in auction. In the circumstances, he prays to give liberty to the petitioner to contest the E.P. proceedings to protect his interest, for which the learned counsel for the respondents have no objection.

In the circumstances, the writ petition is disposed of granting liberty to the petitioner to seek legal protection as may be available to him under law. As a sequel, pending miscellaneous petitions, if any,

shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

5th January, 2016
Js.