

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11481 OF 2006

ORDER:

Heard.

2. This writ petition is filed questioning the auction notice issued by the Sale Officer, the Charminar Cooperative Urban Bank Limited, third respondent, which is presently in liquidation and represented by the Official Liquidator.

3. The case of the petitioner is that he is the absolute owner and possessor of House property bearing D.No.10-3-67/A/4, constructed in an extent of 145 square yards at Humayun Nagar, Hyderabad. Petitioner purchased the said property from one Waheedunissa under document dated 22.06.1989, which was registered on 22.08.1989 at the Sub-Registrar's Office. On noticing the advertisement in the newspaper 'siasat' published on 04.06.2016 proposing to conduct auction on 07.06.2006, writ petitioner filed a claim petition before the third respondent on 06.06.2006 invoking Rule 52 of the A.P. Cooperative Society Rules. As the auction was proposed to be conducted on 07.06.2016, petitioner approached this Court and this court by order dated 12.06.2006 granted stay of all further proceedings pursuant to the auction dated 07.06.2006.

4. A counter affidavit has been filed by the Official Liquidator, who has been officiating as the liquidator of the Charminar

Cooperative Bank Limited under liquidation. The averments in the counter affidavit, in brief, reveal that the third respondent claiming himself to be the owner of the property had mortgaged the property in favour of the Bank. It is further stated in the counter affidavit that one M.A.Gafoor claiming himself to be the son of Sattar, Proprietor of M/s.Neo Azizia Hotel, Nampally, availed a loan of Rs.35,00,000/- from the Bank on 03.10.2000. Two persons stood as personal guarantors and the fifth respondent stood as guarantor by deposit of gift deed in respect of the house property bearing D.No.10-3-67/A/4, admeasuring 152 square yards in Humayun Nagar, Hyderabad, which was acquired by him through gift settlement deed registered under document No.2454 of 2000 dated 19.09.2000. As the borrower had defaulted in repayment of the loan, A.R.C.No.75 of 2003 was filed and an award came to be passed on 13.06.2003 for a sum of Rs.39,35,550/- together with interest at 22% per anum with effect from 01.04.2002. The Bank has filed E.P.No.177 of 2003 for realization of the dues and the date of sale was fixed on 27.06.2006 and on account of the interim orders of this Court, sale was not conducted. The claim petition filed by the petitioner is pending. Though various other aspects have been stated by the liquidator, it is not necessary for this Court to refer to them as they are not really relevant for the purpose of deciding the case on merits.

5. Learned counsel appearing for respondent No.3 by bringing to the notice of this Court Rule 52 Sub-Rule 21(a) of the Rules, submits that inasmuch as the petitioner has already filed his submissions making a claim with respect to the property that is proposed to be auctioned, the sale officer shall consider the same on merits and pass necessary orders.

6. Rule 52(21-a) of the Rules, reads as under:

“(21)(a) Where any claims is preferred or any objection is made to the attachment of any property under this rule on the ground that such property is not liable to such attachment, the officer shall investigate the claim or objection and dispose it of on the merits:

Provided that no such investigation shall be made when the sale officer considers that the claim or objection is frivolous.”

7. As it is not in dispute that Rule 52 is a self contained code with respect to execution of the awards/decrees that are made under either under Section 60 of the A.P. Cooperative Societies Act, 1964 (for short, “the Act”) or under Section 61 of the Act. The objections of the nature, which are made by the petitioner, can be dealt with effectively by the authorities under the Act. Considering the fact that the objections have already been made along with necessary documentary evidence supporting the claim of the petitioner, it is not necessary for this court to enter into the merits of the matter.

8. Inasmuch as, petitioner has made out a case for grant of interim stay pending consideration of the objections basing his claim on the sale deed dated 22.06.1989, this court deems it appropriate

to direct the third respondent to consider the objections of the petitioner and pass appropriate orders, in accordance with law, after issuing appropriate notice and opportunity of hearing to the petitioner. Till consideration of such objections and passing of final orders, as directed, no auction of the property shall be conducted. Considering the fact that this writ petition is of the year 2006, the third respondent shall complete the entire exercise within a period of 12 weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

August 29, 2016
LMV

JUSTICE CHALLA KODANDA RAM

