

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.17946 of 2008

ORDER :

One Smt. Bonthu Kamalavathi, who was the 1st petitioner herein, borrowed an amount of Rs.10,00,000/- from the 2nd respondent – Bank in the year 2000 agreeing to repay the same in 120 equal monthly instalments for a period of 10 years. She paid an amount of Rs.2,67,146/- during the period from 05.01.2000 to 14.11.2006. When she committed default in payment of the subsequent instalments, proceedings were initiated before the 1st respondent – Deputy Registrar of Cooperative Societies, Bhimavaram, West Godavari District (Arbitrator) under Section 61 of the A.P. Cooperative Societies Act, 1964 (for brevity “the Act”) and an exparte Award dated 20.09.2001 was passed in Award No.390/2001-02, for a sum of Rs.12,69,316/-. Challenging the said Award, the 1st petitioner approached the A.P. Cooperative Tribunal, Vijaywada, in O.A.No.47 of 2007. The said O.A.No.47 of 2007 was disposed of, by order dated 19.03.2008, directing the appellant – borrower to deposit 50% of the loan amount with the 2nd respondent – Bank on or before 21.04.2008 and, in case of her failure, it was stated that the appeal would stand dismissed. If the appellant – borrower complies with the said condition, the 1st respondent – Arbitrator was directed to complete the enquiry by

31.05.2008 with a further direction to the appellant to cooperate for completion of the enquiry within the stipulated time. As the 1st petitioner – appellant failed to comply with the said condition by depositing 50% of the loan amount on or before 21.04.2008, O.A.No.47 of 2007 stood dismissed and, as a result of which, the Award dated 20.09.2001 passed by the 1st respondent – Arbitrator had become final.

2. In view of the Award dated 20.09.2001 becoming final, proceedings were initiated for sale of the property attached in public auction on 04.02.2008 and it was knocked down in favour of the 2nd respondent – Bank by way of set off as per Rule 52(11)(k) of the A.P. Cooperative Societies Rules, 1964 (for brevity “the Rules”), as no bidders were participated in the public auction, though the sale was conducted for four times. The effort of the 1st petitioner – borrower seeking stay of the sale by filing M.P.No.29 of 2008 in O.A.No.47 of 2007 resulted in granting *status quo* till disposal of the main appeal and the main appeal itself was dismissed as aforesaid.

3. Challenging the dismissal of the main appeal in O.A.No.47 of 2007, the 1st petitioner – borrower filed W.P.No.8488 of 2008 before this Hon’ble Court and the same was dismissed by order dated 18.04.2008.

4. In view of the dismissal of O.A.No.47 of 2007, as aforesaid, the sale of the property attached was confirmed.

Thereafter, the decree holder/auction purchaser remitted the stamp fee within the stipulated time as per Rule 52(11)(h) of the Rules. As no objections were filed by the 1st petitioner – borrower within the stipulated period of thirty days from the date of the sale, the sale was confirmed vide proceedings dated 16.06.2008 in C.E.P.No.188/2001-02, issued by the 1st respondent – Arbitrator in favour of the 2nd respondent – Bank, which is the decree holder/auction purchaser. Challenging the same, the present writ petition is filed.

5. Simultaneously, challenging the very same proceedings dated 16.06.2008, which is impugned in the present writ petition, the 1st petitioner – borrower also filed O.A.No.43 of 2008 before the A.P. Cooperative Tribunal, Vijayawada. In view of the parallel proceedings, the A.P. Cooperative Tribunal dismissed the O.A.No.43 of 2008, by order dated 22.02.2010.

6. When the present writ petition came up for admission on 19.08.2008, no order was passed. Subsequently, while admitting the writ petition on 15.11.2008, an interim order was passed staying execution of the sale deed in respect of the attached property of the 1st petitioner – borrower, however, giving liberty to the respondents to bring the property to sale in public auction, recovering the amount due to the 2nd respondent – Bank and returning the balance amount to the 1st petitioner - borrower.

7. However, by the date of passing of the said order, pursuant to the order dated 16.06.2008, the Sale Certificate was issued on 13.10.2008, which is the conclusive proof of sale in favour of the 2nd respondent – Bank. Since the respondents did not appear before this Court, the said order was passed by this Court on 15.11.2008.

8. The effect of such a Sale Certificate is mentioned in Rule 52(14)(5) and (6) of the Rules to the effect that in view of confirmation of the sale, it is a conclusive evidence of the fact of purchase by the 2nd respondent – Bank and it was open for the 1st petitioner – borrower to file an appeal under Section 76 of the Act within a period of ninety days of issuance of Sale Certificate. In the meanwhile, as the 1st petitioner – borrower died, though, the 2nd petitioner, who is her daughter, was brought on record as her legal representative, by order dated 05.01.2016 in WPMP.No.20623 of 2010, she has not taken any steps to challenge the said Sale Certificate dated 13.10.2008 before the appropriate Forum.

9. In view of the above facts and circumstances of the case, no further enquiry with regard to the validity of order dated 16.06.2008 passed by the 1st respondent – Arbitrator would arise and the cause in the writ petition does not survive for adjudication and hence the writ petition has become infructuous.

10. Accordingly, this writ petition is dismissed as infructuous. Interim order passed by this Court on 15.11.2008 stands vacated. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A. RAMALINGESWARA RAO, J

22.12.2016.
Msr



HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.17946 of 2008



22.12.2016
Msr