

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.23498 OF 2005

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking to call for the records pertaining to order dated 13.06.2005 passed in Proceedings No.TT1/1853/2002 of the 4th respondent, quash the same and consequently direct restoration of revision petition filed by the petitioner.

The case of the petitioner, in brief, is as follows:

The petitioner Society applied for a loan of Rs.1,60,000/- to the 2nd respondent for establishing a Lime Klin at Vaidana Village in the year 1988. The 2nd respondent sanctioned the same and released Rs.80,000/- with which the petitioner constructed a lime Klin and shed partly. But, the remaining amount was not released by the 2nd respondent. Thereafter, in the year 1999 the second respondent demanded the petitioner to pay Rs.1,59,560/- by including interest and penal interest. As the petitioner failed to repay the amount, the second respondent put the mortgaged property to auction on 30.09.1999. In the said auction, the third respondent became the highest bidder by offering Rs.22,000/- and deposited Rs.3,300/- being 15% of the bid amount on the same day. As per the terms and conditions of the auction, the balance amount has to be paid within thirty days from the date of sale, failing which the deposited amount shall be forfeited. Questioning the said sale, the petitioner preferred an appeal before the 1st respondent on 27.08.1999 raising several grounds. As the third respondent failed to pay the balance amount, the second respondent forfeited the deposit amount. As such, vide order dated 18.11.2002, the 1st respondent

disposed of the appeal by granting 30 days time to third respondent for payment of balance amount and rejected the request of the petitioner. Questioning the same, the petitioner filed revision before the fourth respondent. On 18.08.2005, when the said revision was posted for hearing, the junior of the petitioner's counsel made a request for adjournment on the ground that the counsel was unwell. While refusing to adjourn the matter, the fourth respondent dismissed the revision for default vide order dated 13.06.2005. Thereafter, the petitioner filed an application seeking to set aside the default order and to restore the revision to its file, which was rejected by the 4th respondent vide order dated 16.07.2005. Aggrieved by the same, present Writ Petition came to be filed.

Heard the learned counsel for the petitioner and the learned AGP.

No representation for the unofficial respondents.

The learned counsel for the petitioner mainly submits that though a request was made to adjourn the matter due to ill-ness of the advocate, the fourth respondent passed an order dismissing the case for default, instead of passing orders on merits. Thereafter, an application was filed to recall the order giving reasons as to why the Advocate could not appear before the Court, which was again dismissed. Thus, the learned counsel for the petitioner submits that an opportunity may be given to the petitioner to contest the matter.

The same is opposed by the learned AGP contending that the impugned order is passed in the year 2005 and as such the question of remanding the matter, at this length of time, is impermissible.

It is to be noted that though the order is passed on 13.06.2005, this Court admitted the Writ Petition on 02.11.2005 and ordered for expedite hearing of the writ petition. But the matter was listed for the first time for hearing in the month of November, 2015, thereafter on 18.03.2016 and then the matter got adjourned. After the said date, the matter is listed today.

Having regard to the above, since the impugned order came to be passed without hearing the petitioner and the request of the petitioner for adjournment of the matter due to illness of the counsel was rejected, this Court feels that ends of justice would be served if an opportunity is given to the petitioner to argue his case on merits. Hence, the impugned order is liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the order dated 13.06.2005 passed by the fourth respondent in proceedings No.TT1/1853/2002 and the matter is remanded back to the fourth respondent with a direction to pass orders on merits, after hearing all the parties and in accordance with law, within a period three to six months,.

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

JUSTICE C. PRAVEEN KUMAR

07.09.2017
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