THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.40768 of 2016

ORDER: (Per Justice Sanjay Kumar)

This writ petition was filed with the following prayer:

> "For the reasons disclosed in the accompanying affidavit this Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in putting the above mentioned property for public auction sale by fixing the public auction date as 24-11-2016 by issuing Public Notice for Auction Sale of property dated 18-10-2016, without following Securitization Act and Rules, without giving any fair opportunity to the petitioner and without considering the amount paid Rs.1,00,000/- of this year to the respondent issued the impugned notice is highly illegal and ultravirous to the constitution of India and is vitiated and quite against the principles of natural justice and consequently direct the respondent to set aside the impugned sale notice and to pass any such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case."

By order dated 25.11.2016, this Court granted interim stay of all further proceedings pursuant to the impugned notice dated 18.10.2016. The public auction scheduled to be held thereunder was already held on 24.11.2016. Again, on 03.01.2017, this Court extended the interim order granted earlier subject to payment of all the arrears of overdue instalments and continued payment of monthly instalments.

Sri Maruthi Jadhav, learned counsel representing Sri B.S. Prasad, learned panel counsel for the State Bank of India, would inform this Court that as on date, the outstanding instalments due stand at Rs.1,87,796.36 ps. but the petitioner only paid a sum of Rs.14,000/-. Learned counsel would further state that the bank received 25% of the bid amount from the highest bidder in the auction sale held on 24.11.2016 but possession of the secured asset was not handed over to him.

Significantly, the petitioner did not even deem it necessary to file an extension petition to comply with the order dated 03.01.2017. Thereafter, when the matter was listed before this Court on 28.06.2017, taking note of the failure of the petitioner to comply with the conditional order dated 03.01.2017 or even seek extension of the time stipulated thereunder, this Court deemed it appropriate to give one last opportunity to the petitioner to prove his *bonafides* by paying the entire outstanding instalments due as on that day which stood at Rs.6,78,377/- immediately. The matter was directed to be listed for orders on 03.07.2017.

Today, the matter appears under the said caption and Sri I. Venkata Prasad, learned counsel for the petitioner, would concede that the order dated 28.06.2017 has not been complied with and would submit that the petitioner is willing to remit a sum of Rs.2,00,000/- to the respondent bank immediately.

Given the aforestated sequence of events, we are of the opinion that no further indulgence can be shown to the petitioner. Be it for whatever reason, the petitioner is unable to clear the outstanding dues of the respondent bank. In the meanwhile, the interest of a third party, the auction purchaser, has intervened and the said party is not even before us. This Court therefore cannot extend further indulgence to the petitioner at the cost of the innocent third party auction purchaser who has already parted with his money but is yet to secure any benefit.

The writ petition is accordingly dismissed. This order will not preclude the petitioner from availing appropriate remedies in accordance with law.

Interim order dated 25.11.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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GUDISEVA SHYAM PRASAD, J

5th July, 2017
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