

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.18502 of 2018

Order: (Per the Hon'ble Smt Justice Kongara Vijaya Lakshmi)

This Writ Petition is filed to declare the proclamation of Sale - cum - E-auction Sale Notice, dated 09.05.2018, issued by the 1st respondent – Recovery Officer-II, Debts Recovery Tribunal, Visakhapatnam, in R.P.No.14 of 2009 in O.A.No.9 of 2006, as illegal and disproportionately lower than the value fixed by the Government as per the market value assistance document issued by the Sub-Registrar, Pithapuram, East Godavari District and a consequential direction was sought to the Recovery Officer to issue a revised proclamation of Sale - cum - E-auction Sale Notice.

The brief facts of the case, according to the petitioner, are that while issuing the auction proceedings the Recovery Officer has not taken into account the market value fixed by the Government as was existing on the date of proclamation notice; the amount proposed to be recovered through proclamation – cum - e-auction sale is lower than the actual existing price; the reserve price, earnest price money deposit and bid increase amount are also very low; the action of the 1st respondent would result in selling away the property worth Rs.133,20,12,500/- (Rs.56,31,34,000/- + 76,88,78,500/-) at a throwaway price of Rs.28.5 Crores, which would result in irreparable loss to the petitioner company.

On 13.06.2018, this Court passed an order observing that auction sale held, if any, shall be subject to further orders.

On 14.06.2018, this Court passed the following order.

“There shall accordingly be interim stay of further proceedings pursuant to the auction sale held on 14.06.2018. Respondent No.2-Bank shall receive 25% of the sale consideration from the auction purchaser, if any, and shall not confirm the sale or receive the balance sale consideration pending further orders.”

Counter affidavit has been filed on behalf of the 2nd respondent – Central Bank of India stating, *inter alia*, that as the petitioner failed to repay the amounts due to the Bank, the Bank filed O.A.No.9 of 2006 before the 1st respondent - Debts Recovery Tribunal, Visakhapatnam; the said OA was allowed and the recovery certificate for Rs.6,46,97,245.24 ps., with interest at 15% p.a., was issued; the Recovery Officer, after issuing the required notices, issued the Proclamation of Sale – cum – E-auction Sale Notice dated 09.05.2018 fixing the date of auction on 14.06.2018 for sale of the properties for recovery of Rs.18,83,00,951.47 ps.; after receiving the valuation reports from the approved valuers, the reserve price was fixed at Rs.28.50 Crores for ‘B’ schedule properties which are described in the auction sale notice; the Bank has taken the printout from the Government Website and according to the same, the industrial area is valued at Rs.74,52,87,400/- for Ac.23.69 cents and Rs.6,15,45,000/- for Ac.18.65 cents of agricultural land, totaling to Rs.80.68 Crores; as per the valuation of M/s. Sundar Associates, the guideline rate

which was obtained from the Registrar's office is Rs.6500/- per sq. yard and part of the land is occupied by the Ex-employees of Sugar Mills and the land has to be converted from industrial to residential usage and therefore the said valuer has fixed the market value from Rs.4,000/- to Rs.4,500/-; since the total value comes to Rs.31,27,61,000/- the 1st respondent fixed the distress value at Rs.25.00 Crores and the reserve price has been fixed at Rs.28.50 Crores which is not the final rate of the property, but initial rate for bidding; the petitioner has submitted a proposal for one time settlement on 02.06.2015 wherein they have stated that the property is not worth more than Rs.27,.62 Crores; if the petitioner is aggrieved by the order of the Recovery Officer in issuing the Proclamation of Sale – cum – E-auction Sale notice, it has to approach the Debts Recovery Tribunal under Section 30 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 (RDDB Act); as alternative remedy is available to the petitioner, the Writ Petition is not maintainable as held in **Sadashiv Prasad Singh v. Harendar Singh**¹.

I.A.No.2 of 2018 is filed by the proposed respondent No.3, who is a participant in the auction, stating, *inter alia*, that despite the recovery certificate in OA No.9 of 2006, no amounts were paid to liquidate the loan amount and recovery proceedings in RP No.14 of 2009 are pending for the last 9 years and as the writ petitioner is a chronic defaulter of the loan amount, it is not entitled for any equitable relief; the judgment relied upon by the writ petitioner reported in **Pochiraju Industries Limited, Tamilnadu, rep. by its Managing Director, Sri P. Sudhakar v. Punjab National Bank,**

¹ AIR 2014 SC 1078

rep. by its Managing Director, New Delhi², is in respect of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act') and the ratio laid down in the said judgment is relating to a sale notice under Rule 8(4) and (5) of the Rules made under the SARFAESI Act and hence the said judgment has no applicability to the present case; he participated in the auction held on 14.06.2017 and deposited 25% of the bid amount on 14.06.2017 and is ready and willing to deposit the balance bid amount; the contention of the writ petitioner that the market value i.e., the Sub-Registrar's value has to be taken into account while issuing proclamation of sale is totally misconceived; the contention of the writ petitioner that the upset price is very low is also not correct.

I.A.No.3 of 2018 is filed by the proposed respondents 4 and 5, who claims to have entered into an agreement of sale dated 20.05.2015 with the 2nd respondent and that at the time of agreement an amount of Rs.2.00 Crores was paid and later on an amount of Rs.9.00 Crores was paid to the 2nd respondent on various dates out of the total sale consideration of Rs.33.00 Crores; when the property was brought to public auction in the month of April 2018, the proposed respondents 4 and 5 filed an application before the Recovery Officer stating that the property was already agreed to be sold to them and as such it cannot be sold in the public auction; pursuant to their claim petition, the auction was postponed and subsequently another auction notice was issued on 11.05.2018; they are ready to pay the reserve price to protect their interest in the property.

² 2018 (2) ALT 128 (DB)

The petitioner filed I.A.No.4 of 2018, seeking to grant leave for raising additional grounds. A counter affidavit has been filed on behalf of the Central Bank of India to the said IA stating, *inter alia*, that the auction was held on 14.06.2018 and the 3rd respondent and one Ramesh have submitted the tender forms; however the said Ramesh has not deposited the EMD amount and hence the 3rd respondent become the sole bidder and as they deposited the EMD amount on 06.06.2018 they were declared as successful bidders for Rs.28,55,00,000/- and that they deposited 25% of the bid amount.

IA No.4 of 2018 was allowed on 10.08.2018. However, during the course of arguments, Ms. V. Uma Devi, learned counsel for the petitioner, submitted that she is giving up the additional grounds raised in I.A.No.4 of 2018 and that she is not pressing for the same.

Additional affidavit has been filed on behalf of the Central Bank of India with regard to valuation reports relied upon by it stating, *inter alia*, that the Recovery Officer has obtained the valuation report from the qualified valuer and issued Proclamation of Sale – cum – E-Auction Sale Notice dated 27.03.2014 fixing the date of auction on 20.05.2014; petitioner filed W.P.No.11583 of 2014 and obtained interim orders on 22.04.2014; when the auction was postponed the petitioner withdrew the said Writ Petition; whenever sale proclamation is issued the petitioner is filing writ petitions to see that auction is stalled; the 2/3rd of the mortgaged property is the agricultural property with irregular shape and 1/3rd part of the property is industrial; if the entire

extent of the property i.e., Ac.42.34 cents is scheduled for sale in one lot, it will not fetch good value, as 2/3rd part of property is agricultural land which is low lying and needs huge expenditure for leveling, conversion into residential purpose and 50% of the land has to be earmarked for infrastructural facilities; as per the valuation given by M/s Sundar Associates, the valuation of the property is Rs.31,27,61,000/- and as per the valuation given by M/s Spruthi Entrepreneurs the value of the property is Rs.33,82,50,000/- and as per the online valuation provided by the Government of AP the Government rate for industrial area and for agricultural area are as follows:

Government rate for industrial area - Rs.3,14,60,000/- per acre

Agricultural area - Rs.33,00,000/- per acre

Industrial area as per endorsement - Extent in Sy.No.633 is 14.20 cents, in Sy.No.565/1 is Ac.0.27 cents and in Sy.No.365/3 is Ac.0.14 cents.

Total industrial area is Ac.14.61 cents

$$14.61 \times 3,14,60,000 = \text{Rs.}45,96,30,600/-$$

Remaining agricultural area is Ac.27.73 cents.

$$27.73 \times 33,00,000 = \text{Rs.} 9,15,09,000/-$$

Total : - Rs.55,11,39,600/-

50% of Total : - Rs.27,55,69,800/-

It is further stated in the additional counter affidavit that the reserve price is not the correct value of the property for which the property would be sold; it is only initial price fixed for bidding; depending on the market value, the auction purchaser may bid any amount higher than the reserve price; the reserve price puts a limit on the authority of the auctioneer, who cannot accept a price

below the upset/reserve price; the expressions, value of property and upset price are not synonymous but have different meanings and that the writ petition is being filed only to stall the recovery proceedings.

Heard Ms. V. Uma Devi, learned counsel for the petitioner, Sri Ch. Siva Reddy, learned Standing Counsel for the 2nd respondent – Bank, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of respondent No.3 and Sri S.M. Rafee, learned counsel for respondents 4 and 5 and perused the record.

The main ground of challenge by the writ petitioner is that the upset price fixed is far below the market value fixed by the Government. According to the petitioner, the value of the property is Rs.133,20,12,500/-, but no details whatsoever have been given in the affidavit filed along with the Writ Petition as to how the petitioner has arrived at the said value.

As seen from the record, the petitioner filed as many as five writ petitions till now. W.P.No.11583 of 2014 was filed challenging the auction notice dated 19.02.2014 and a conditional order of stay of auction was passed on 22.04.2014 observing as follows.

“We stay the auction of the secured assets of the petitioner, subject to the condition of the petitioner depositing a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) on or before 29.04.2014. The petitioner shall further deposit a sum of Rs.90,00,000/- (Rupees Ninety lakhs only) on or before 25.06.2014. In default of

payment of either of the instalments as mentioned above, the stay granted by this Court shall stand vacated automatically and the respondent Bank shall be at liberty to proceed further in accordance with law.”

Subsequently, without complying with the said conditional order, the said writ petition was withdrawn by the petitioner on 12.10.2015. Before withdrawing the said W.P.No.11583 of 2014, petitioner filed W.P.No.29651 of 2014 challenging the auction notice dated 01.09.2014 and the said Writ Petition was disposed of on 26.09.2014 observing as follows.

“This Writ Petition, under Article 226 of the Constitution of India, is filed to declare the action of respondent No.2 in fixing the e-auction sale to be conducted on 26.09.2014, under the proceedings of respondent No.1 in R.P.No.14 of 2009 in Original Application No.9 of 2006, dated 01.09.2014, basing on the old Valuation Report, dated 12.11.2013, valuing Rs.20,85,00,000/- as per panel valuer’s report dated 06.11.2013 for the outstanding balance of RS.13,59,13,671.70 ps., as on 06.01.2014 instead of considering Government Market Value existing as on 17.09.2014, which is Rs.45.863 Crores; Rs.34.654 Crores and Rs.1.452 Crores total value nearly Rs.82.00 Crores for schedule ‘B’ under item Nos.1 to 3 respectively and consequently direct the 2nd respondent herein

not to conduct the auction for schedule 'B' under item Nos.1 to 3 by bifurcating the same property.

2. Heard.

3. The only contention raised by the learned counsel for the petitioner is that before conducting the auction, market value as on preceding date of the auction shall be taken into consideration for the purpose of fixing the upset price.

4. In view of the fact that auction has been postponed, the Debts Recovery Tribunal is directed to obtain a fresh valuation certificate before proceeding to conduct auction.

5. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs."

Thereafter, the petitioner filed W.P.No.39799 of 2014 challenging the auction notice dated 27.11.2014 and the said Writ Petition was dismissed on 26.12.2014 by observing as follows.

"2. The only contention of the learned counsel for the petitioner is that valuation fixed by the Recovery Officer is very low and therefore, she prays to admit the Writ Petition.

3. If the valuation fixed by the Recovery Officer is very low, the petitioner can file an appeal under Section 20 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993 before the appellate Tribunal by producing relevant documents showing the market value of the secured asset

so that the Recovery officer can rectify the same.
Therefore, there are no grounds to interfere with the impugned order.”

Again challenging the auction notice dated 07.01.2015, the petitioner filed W.P.No.919 of 2015, wherein permission was sought to withdraw the said Writ Petition on 29.01.2015 with liberty to file an application in W.P.No.39799 of 2014 to correct the clerical error in the order passed in W.P.No.39799 of 2014, dated 26.12.2014. Again challenging the auction notice dated 28.02.2018 the petitioner filed W.P.No.12072 of 2018, which was dismissed on 14.06.2018, as the auction which was scheduled on 12.04.2018 failed for want of bidders.

The writ petitioner did not make any attempt either to purchase the property in the auction or tried to get a willing purchaser to purchase the said property in the auction.

The auction sale notice is dated 09.05.2018 fixing the auction sale on 14.06.2018, and the Writ Petition came up for admission on 13.06.2018.

The main contention of the learned counsel for the petitioner is that the value of the property according to the market value assistance document is Rs.6500/- per sq. yard and that the property is grossly under valued.

When the matter came up for admission, learned counsel for the petitioner has relied upon **Pochiraju Industries Limited's** case (supra) for the proposition that merely because power is vested in a secured creditor to realize its dues it does not dilute the

fact that the secured creditor owes a fiduciary duty to protect the interest of such borrower while putting his properties to sale and that it is mandatory for the bank to secure a fresh valuation from an approved valuer before issuing a fresh sale notice. The said case arose under the SARFAESI Act. In that case, the impugned auction sale notice was dated 01.07.2017. The bank reduced the reserve price for the properties from stage to stage, in the course of its attempts to sell the same. The bank relied upon the valuation report dated 01.02.2017, wherein it contained a clear certification that it was valid for three months only and that the said valuation report was the basis for earlier auction sale dated 14.03.2017. The contention of the learned counsel for the petitioner in that case was that the valuation report dated 01.02.2017 is the basis for fixing the reserve price despite the fact that the said valuation report is not valid. In the said judgment, this Court relied upon Rule 8(4) and (5) of the Rules of 2002. And in the said case sale consideration is only Rs.10,000/- over the reserve price. In those circumstances, this Court held that the sale is null and void being in violation of Section 13 of the SARFAESI Act and Rules 8 and 9 of the Rules of 2002. It was specifically held that as the valuation report expired by efflux of the validity period the bank could not have taken into consideration of the same for fixing the reserve price in the subsequent e-auction, as Rule 8(5) of the Rules of 2002 clearly mandates that before effecting sale of the immovable property under Rule 9(1) thereof, the authorized officer should obtain valuation of the property from an approved valuer and, in consultation with the secured creditor, fix its reserve price and that such step should have been taken immediately before the

proposed sale. The bank has also admitted in that case that no such procedure was followed and apart from that in that case the bank has fixed the upset price basing on the valuation done by its own officer.

In the said judgment, this Court further observed that “this Court is neither equipped nor has the wherewithal to undertake verification of such valuation”. It further observed that “in any event, intricacies of such valuation do not constitute a judicially manageable issue, which can be gone into by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.” Hence, the said judgment does not apply to the facts of the present case.

On the other hand, learned counsel for the 2nd respondent – Bank contends that the value/upset price is fixed basing on the valuation reports obtained from two different valuers. He also submits that as the property is agricultural land, to develop the same into residential area about 50% has to be deducted. He further submits that the petitioner has approached this Court without availing the alternate remedy of appeal.

Sri Vedula Venkata Ramana, learned Senior Counsel, appearing for the implead respondent No.3 submits that there is no basis at all for the valuation shown in the writ affidavit and the Bank is trying to execute the auction since 2009 and the present attempt to sell the property is the fifth one; the petitioner did not come to the Court with clean hands and that the details with regard to earlier writ petitions were not stated by the writ

petitioner; if the reserve price is low, there will be a good competition for the bidders.

The petitioner has got the alternative remedy of filing an appeal before the Appellate Tribunal under Section 30 of the Recovery of Debts due to the Banks and Financial Institutions Act, 1993, against the impugned order.

The law on the subject is stated in the judgment reported in **Authorized Officer, State Bank of Travancore v. Mathew K.C³**, wherein the Hon'ble Supreme Court held as under.

“6.....The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in **Commissioner of Income Tax v. Chhabil Dass Agarwal (2014(1) SCC 603)** as follows:

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an

³ 2018(3) SCC 85

effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

7. The pleadings in the writ petition are very bald and contain no statement that the grievances fell within any of the well defined exceptions.....”

Nothing is stated in the affidavit filed in support of the Writ Petition, as to how the case of the petitioner falls within the well defined exceptions.

Considering the plea of availability of alternate remedy under the Recovery of Debts due to the Banks and Financial Institutions Act, 1993, the Hon’ble Supreme Court in **Punjab National Bank v. O.C. Krishnan and others**⁴ observed that:-

“6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the

⁴ (2001) 6 SCC 569

Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

In **United Bank of India v. Satyawati Tandon**⁵, the Hon’ble Supreme Court observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available. The Hon’ble Supreme Court observed that:

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such

⁵ 2010 (8) SCC 110

cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

The petitioner has not made out a case for entertaining the Writ Petition and the discretionary jurisdiction would not, ordinarily, be invoked to entertain the Writ Petition when there is an alternative remedy by way of an appeal. The contention of under valuation of property can also be raised before the Tribunal, as held by this Court in a Writ Petition filed by the petitioner i.e., W.P.No.39799 of 2014, dated 26.12.2014.

As seen from the record, no part of the loan amount has been paid at any time after the account has become NPA. For one month 10 days the borrower did not do anything after the sale notice. Till about the date of auction the petitioner was silent.

The learned Senior Counsel for the 3rd respondent also relied upon the judgment of the Hon'ble Supreme Court reported in **Anil**

Kumar Srivastava v. State of UP⁶, and submits that the expressions “value of a property” and “upset price” are not synonymous but have different meanings.

In **Anil Kumar Srivastava’s case** (supra) the Hon’ble Supreme Court held as follows.

“11. Before coming to the above challenge, we would like to examine the concepts of 'valuation' and 'upset/reserve price'. In the case of *McManus v. Fortescue* [(1907) 2 K.B 1] it has been held by the Court of Appeal that in a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact, that the sale is subject to a reserve, that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that amount is equal to or higher than the reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the upset/reserve price. That he could refuse the bid which is below the upset price.

12. The aforestated ruling explains the meaning of the term 'reserve price'. It indicates the object behind fixing the reserve price viz., to limit the authority of the auctioneer. In the present case, the Board resolution is meant to guide the officers of the second respondent. The resolution prescribes the guidelines for fixing the reserve price. The concept of reserve price is not synonymous with 'valuation of the property'. These two terms operate in different

⁶ (2004) 8 SCC 671

spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. [See Pollock & Mulla: Indian Contract & Specific Relief Acts (2001), 12th Edn., p.50].

13. Valuation is a question of fact. This Court is reluctant to interfere where valuation is based on relevant material. [See Duncans Industries Ltd. v. State of U.P. (2000) 1 SCC 633]. The difference between valuation and upset price has been explained in the case of B. Susila v. Saraswathi Ammal [AIR 1970 Madras 357] in which it has been held that fixation of an upset price may be an indication of the probable price which the land may fetch from the point of view of intending bidders. However, notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside. That the fixation of the reserve price does not affect the rights of the parties. Similarly, in the case A.U. Natarajan (Dr.) v. Indian Bank [AIR 1981 Madras 151] it has been held that the expressions "value of a property" and "upset price" are not synonymous but have different meanings. That the term "upset price" means lowest selling price or reserve price. That unfortunately in many cases the word "value" has been used with reference to upset price. That the sale has to commence at the higher price and in the absence of bidders, the price will have to be progressively brought down till it reaches the upset price. That the upset price is fixed to

facilitate the conduct of the sale. That fixation of upset price does not preclude the claimant from adducing proof that the land is sold for a low price.”

In the decision reported in **The Nedungadi Bank Ltd., v. Ezhimala Agri Products**⁷, the Kerala High Court held as follows.

“.....We however are of the view that the terms "reserve price" and "upset price" though analogous and almost homologous are not synonymous. While understood in the context in which the expression is employed in the code, "reserve price" means a price reserved at an auction as the minimum amount realisable by sale of the property so as to realise the entire mortgage debt or a proportionate portion of the mortgage debt- a price which will remain static during the sale unless the court on grounds of genuine diffidence on the side of the decree-holder chooses to reduce the same. Fixation of reserve price is peculiar to situations where court grants permission to mortgagee-decree-holders to bid in the auction. Upset price and reserve price are certainly the lowest prices for which the properties will be sold in auction. But the term "reserve price" is exclusive to mortgagee-purchasers. The term "upset price" is used generally in respect of purchases by all others including third parties. When upset price has been fixed, the bid should commence with that price and the sale will ultimately be held for an amount higher than that price. But in the case of reserve price, the bid can commence with the upset price which may be an amount below the

⁷ 2004 (1) KLJ 268

reserve price. But the moment the mortgage-decree holder avails the leave granted to him by the court, the sale will be knocked down in his favour for the reserve price, though nothing prevents a conscientious decree-holder from bidding and purchasing for a higher amount.”

In **Pochiraju Industries Limited's** case (supra) the Division Bench of this Court has categorically observed that “this Court is neither equipped nor has the wherewithal to undertake verification of such valuation and, in any event, intricacies of such valuation do not constitute a judicially manageable issue, which can be gone into by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution.”

Valuation of the secured asset has no relevance to the market value/book value. This valuation is done to fix the reserve price. Fixation of reserve price/upset price is to disable the auctioneer to sell the property for an amount lesser than reserve price. Fixation of reserve price is only a guiding factor. The expression “value of the property” and “upset price” are not synonymous, but have different meanings as discussed in the above mentioned judgments. The petitioner has got an alternative remedy of appeal under Section 30 of the RDDB Act and bypassing the statutory remedy available under the Act, the present Writ Petition has been filed. Nothing prevented the petitioner in participating in the auction and there is no prohibition as such to finalize the auction even if one bidder participates. No attempt has been made by the borrower to make any payment whatsoever and there is no statutory violation of the

Act or the Rules made thereunder. As no *mala fides* have been attributed to the Bank officials and as they are not made parties by name, the valuation made cannot be interdicted. It is also relevant to note that the petitioner itself addressed a letter dated 02.06.2015 seeking one time settlement, wherein it has been specifically mentioned that the value of the property is not worth more than Rs.27.62 Crores.

In view of the facts and circumstances of the case, the Writ Petition is dismissed. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI, J

Date: 26th October 2018
Nsr



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Date: 26th October 2018

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