

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.36012 OF 2016

Between:

M/s. SPL Projects

... Petitioner

and

The Debts Recovery Appellate Tribunal
at Kolkatta and others

... Respondents

Date of Judgment Pronouncement: 20th FEBRUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

P.KESHAVA RAO, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO**

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Between:

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<Gist:

>Head Note:

! Counsel for petitioner : Sri M.S.Prasad and
Sri P.A.V.Bala Prasad

^Counsel for respondent Nos.1 & 2 : Assistant Solicitor General

^Counsel for respondent No.3 : Sri E.Madan Mohan Rao

^Counsel for respondent No.4 : Sri Vedula Venkata Ramana
and Sri C.Tulasi Krishna

? CASES REFERRED:

1. (2017) 4 SCC 735
2. 2016 (4) ALT 193
3. (2014) 5 SCC 610

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAHA RAO**

WRIT PETITION NO.36012 OF 2016

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

The petitioner firm assails the order dated 16.11.2015 passed by the Debts Recovery Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in S.A.No.233 of 2015 and the order dated 07.09.2016 of the Debts Recovery Appellate Tribunal, Kolkata (*hereinafter*, 'the Appellate Tribunal'), confirming the same in appeal, in Tender No.165 of 2015/75. It also seeks a declaration that the auction sale held by the State Bank of Hyderabad (now, the State Bank of India) (*hereinafter*, 'the bank') on 23.03.2015, pursuant to the auction notice dated 16.02.2015, is illegal.

By order dated 27.10.2016 passed in W.P.M.P.No.44379 of 2016 filed in this writ petition, this Court took note of the petitioner firm's positive statement made across the bar that the entire dues of the bank had been deposited and were lying in a deposit and directed the fourth respondent in the writ petition, the auction purchaser, who was in possession of the property, not to make any encumbrances until further orders.

Facts, to the extent relevant, are as follows: The petitioner firm availed loan facilities from the bank but as default was committed in repayment, the bank initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'), by issuing demand notice dated 23.12.2011 under Section 13(2) thereof. Further measures were deferred by the bank

upon the assurance given by the petitioner firm that it would clear the loan. However, as it failed to do so, the bank issued a fresh demand notice on 03.07.2013 under Section 13(2) of the SARFAESI Act and pursuant thereto, possession notice dated 03.09.2013 was also issued under Section 13(4) thereof. The bank then issued sale notice dated 19.09.2013 under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (*for brevity*, 'the Rules of 2002'). Aggrieved thereby, the petitioner firm filed S.A.No.605 of 2013 before the Tribunal. This S.A. was dismissed by the Tribunal on 03.02.2015. Thereupon, the bank again issued a fresh sale notice on 16.02.2015. Assailing the same, the petitioner firm filed S.A.No.233 of 2015 before the Tribunal. No interim orders were granted therein as the auction sale had already been held by the bank on 23.03.2015. The petitioner firm then moved an application before the Tribunal seeking stay of all further proceedings pursuant to the said sale. By order dated 01.05.2015, the Tribunal directed the bank to maintain *status quo* as the auction purchaser had already deposited the entire sale consideration. Aggrieved by this order, the auction purchaser filed W.P.No.14205 of 2015 before this Court. This writ petition was disposed of on 29.06.2015, directing the Tribunal to implead him as a party in S.A.No.233 of 2015 and dispose of the same expeditiously after hearing the parties. Pursuant thereto, the auction purchaser was impleaded as the second respondent in S.A.No.233 of 2015 and after hearing all the parties concerned, the Tribunal dismissed the S.A., by the order dated 16.11.2015. Aggrieved thereby, the petitioner firm preferred an appeal before the Appellate Tribunal *vide* Tender No.165 of 2015/75. This appeal

was dismissed by the Appellate Tribunal by order dated 07.09.2016. Assailing both these orders, the petitioner firm is before this Court.

Perusal of the order dated 16.11.2015 passed by the Tribunal in S.A.No.233 of 2015 reflects the following salient points: The main contention of the petitioner firm before the Tribunal was that there was non-compliance with Rules 8(6) and 9(1) of the Rules 2002 as it was not served with the sale notice giving it a clear thirty days notice period before the date of the sale. The Tribunal however took note of the fact that the notice dated 16.02.2015 was published in two newspapers, including one vernacular newspaper, on 18.02.2015, which was thirty days prior to the date of sale, i.e., 23.03.2015. The Tribunal observed that further intimation was given to the petitioner firm on 24.02.2015 regarding the notice dated 16.02.2015 which had been published on 18.02.2015. Opining that these documents showed that the bank had strictly maintained a thirty days notice period as mandated under the rules and as there was no deviation from the procedure contemplated under the SARFAESI Act and the Rules of 2002, the Tribunal dismissed the S.A.

In appeal, the Appellate Tribunal opined that Rule 8(6) of the Rules of 2002 provides that the authorized officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets under sub-rule (5) thereof and that it does not contemplate giving of such details in the said notice, which are to be given in a public notice in two leading newspapers, as required under the *proviso* to Rule 8(6). The Appellate Tribunal also noted that it was not in dispute that the sale was held after expiry of thirty days

from the date on which the public notice of sale was published in the newspapers, as the said publication was on 18.02.2015 and the sale was held on 23.03.2015. The Appellate Tribunal found on facts that the notice dated 04.02.2015 was in accordance with Rule 8(6) of the Rules of 2002, as the said rule did not contemplate giving details as were required to be given in the public notice in two leading newspapers. The contention of the petitioner firm that the notice dated 24.02.2015 should be treated as a notice under Rule 8(6) of the Rules of 2002 was rejected and the Appellate Tribunal confirmed that this was only further intimation given to the petitioner firm about the publication in the newspapers of the auction sale notice. The Appellate Tribunal accordingly held that a thirty days notice period would not have to be maintained from the letter dated 24.02.2015, as the notice dated 04.02.2015 under Rule 8(6) of the Rules of 2002 was received by the petitioner firm on the same day itself but it did not even seek to exercise its right of redemption under Section 13(8) of the SARFAESI Act. As the sale was held well after thirty days therefrom, on 23.03.2015, the Appellate Tribunal found no merit in the appeal and dismissed it.

Sri M.S.Prasad, learned senior counsel representing Sri P.A.V.Bala Prasad, learned counsel for the petitioner firm, would argue that the notice dated 04.02.2015 issued by the bank under Rule 8(6) of the Rules of 2002 does not meet the requirements of law and the notice dated 24.02.2015 issued by the bank fixing the sale on 23.03.2015, without a clear thirty days notice, was in violation of the mandate of Rules 8 and 9 of the Rules of 2002. The notice dated 24.02.2015 was stated to have been posted on 28.02.2015 and was delivered to the petitioner firm only on

02.03.2015, clearly demonstrating that the required thirty days notice period was not maintained.

Sri M.S.Prasad, learned senior counsel, would also rely upon **CANARA BANK V/s. M.AMARENDER REDDY**¹ and argue that in terms of the law laid down by the Supreme Court therein, the bank had to mention the mode, date and time fixed for the sale in the notice issued under Rule 8(6) of the Rules of 2002 itself and as the notice dated 04.02.2015 does not satisfy this requirement, he would assert that it is an invalid notice in the eye of law and the sale held pursuant thereto on 23.03.2015, on the strength of the public notice of sale dated 16.02.2015, would stand vitiated.

He would further contend that perusal of the notices in question clearly demonstrates the failure of the bank to abide by the statutory mandate. He would submit that even if the notice issued on 04.02.2015 is taken to be a notice under Rule 8(6) of the Rules of 2002, the notice issued on 16.02.2015 under Rule 9(1) thereof, whereby the auction of the secured asset was scheduled to be held on 23.03.2015, was also in violation of the procedural mandate. He would submit that the reserve price fixed at Rs.200.54 lakh for the secured asset, a residential building consisting of three floors, with adjoining land of 531 square yards, at New Gaddiannaram, Saroornagar, Ranga Reddy District, and ultimately sold for Rs.200.74 lakh, was far lesser than the market value of the property, which was more than Rs.600.00 lakh. He would inform this Court that the petitioner firm deposited Rs.125 lakh in another nationalised bank to show its *bonafides* as the bank refused to receive the demand drafts dated 04.11.2015 and

¹ (2017) 4 SCC 735

05.11.2015 offered to it. Learned senior counsel would therefore assert that the sale under challenge should be set aside and the petitioner firm may now be afforded an opportunity to clear its outstanding dues.

At this stage, it would be relevant to note the contents of the various notices, which find mention in the orders of both the tribunals, and form the fulcrum of the petitioner firm's case. The notice dated 04.02.2015 issued by the bank is titled 'SALE NOTICE TO BORROWER/GUARANTOR UNDER SECURITY INTEREST (ENFORCEMENT) RULES, 2002'. The relevant portion thereof reads as under:

"Whereas you have failed to satisfy your/borrower's liabilities to the bank even after receipt of notice under Section 13(2) and Section 13(4) of the Act. Therefore the Bank in exercise of its rights granted under the Act and Rules, issues this notice under and Rule 8(6) (Immovable) of the Security Interest (Enforcement) Rules, 2002, calling upon you to discharge in full liabilities amounting to Rs.1,22,87,695.59 (Rupees one crore twenty two lakhs eighty seven thousand six hundred and ninety five and paise fifty nine only) as on 31.01.2015 with interest, costs and charges within 30 days from the date of this notice, failing which, the bank shall proceed under the Act with the sale of the secured properties to realize the above stated outstandings, with interest and costs."

(emphasis is ours)

Thereafter, e-auction-cum-sale notice dated 16.02.2015 under Rule 9(1) of the Rules of 2002 was published in Namaste Telangana Telugu newspaper and The Metro India English newspaper, on 18.02.2015. The bank then issued letter dated 24.02.2015 to the petitioner firm. This communication is of great relevance and requires reproduction, to the extent relevant:

“To

Dated: 24.02.2015.

Mr.S.Prabhakar,
Managing Partner,
SPL Projects,
1/301, Kalyani Block, Sahara States,
Mansoorabad, L B Nagar,
Hyderabad.

Dear Sir,

NOTICE UNDER RULE 8(6) OF THE SECURITY INTEREST
(ENFORCEMENT) RULES

Please take notice that the secured assets mortgaged/charged to the Bank more fully described in the schedule hereunder shall be sold by public e-auction to be held on 23.03.2015 through <https://bankauctions.in> between 12.00 noon and 1.00 pm. For further details, please refer to the notice published in the newspaper on 18.02.2015 and websites <https://bankauctions.in> and www.foreclosureindia.com.

Yours faithfully,
(Sd/- (seal))
(Authorised Officer)

....”

It is the contention of Sri M.S.Prasad, learned senior counsel, that as this notice professed to be one under Rule 8(6) of the Rules of 2002, the bank was bound to maintain a clear thirty days notice period from the date of receipt thereof and as the said notice was received by the petitioner firm only on 02.03.2015, the auction sale held on 23.03.2015 was in violation of the statutory mandate with regard to maintaining a clear thirty days gap between the service of notice under Rule 8(6) of the Rules of 2002 and the date of the sale.

Per contra, Sri E.Madan Mohan Rao, learned counsel appearing for the bank, would contend that the communication dated 24.02.2015 was not a notice under Rule 8(6) of the Rules of 2002, notwithstanding the misleading title therein, as there was no mention of thirty days time being given to the addressee, as

required under the said rule. He would submit that this was only an intimation to the petitioner firm as to the publication of the notice under Rule 9(1) in newspapers and therefore, the mistake on the part of the bank in titling the communication otherwise would not enure to the benefit of the petitioner firm. He would further point out that the argument advanced by the petitioner firm before the Appellate Tribunal, to the effect that the bank had to maintain a clear gap of thirty days in relation to the notices under Rule 8(6) and Rule 9(1) of the Rules of 2002 independently, was based on the decision of this Court in **M.AMARENDER REDDY V/s. CANARA BANK**², but the said decision no longer constitutes good law in the light of the reversing judgment of the Supreme Court in **CANARA BANK**¹. He would therefore submit that the argument that the bank was required to maintain two separate notice periods of thirty days, one from the notice under Rule 8(6) and the other from the publication of the notice under Rule 9(1) of the Rules of 2002, does not hold water. He would further state that the petitioner firm itself addressed letter dated 31.12.2014 to the bank, undertaking that it would repay the dues within thirty days, failing which the bank could proceed with the auction of the property. As it failed to abide by this undertaking, the learned counsel would assert that the petitioner firm lost its right to protest against the sale held on 23.03.2015. As regards the alleged efforts of the petitioner firm to repay the outstanding dues, learned counsel would point out that the demand drafts dated 04.11.2015 and 05.11.2015 were secured by the petitioner firm in the name of S.Prabhakar, its Managing Partner, and assert that

² 2016 (4) ALT 193

they did not amount to proper tender to clear the outstanding dues. As the petitioner firm failed to repay these dues despite the many assurances given by it and as the bank had already completed the sale transaction pursuant to the auction sale held on 23.03.2015, learned counsel would submit that the writ petition does not merit consideration.

Sri Vedula Venkata Ramana, learned senior counsel representing Sri C.Tulasi Krishna, learned counsel for the fourth respondent/auction purchaser, would contend that pursuant to the auction sale held on 23.03.2015, the fourth respondent was declared the highest bidder and a Sale Certificate was duly executed and registered in his favour. Possession of the property sold was also delivered to him on 25.11.2015. He would inform this Court that the fourth respondent has been residing in the said property, having leased out a portion thereof. Learned senior counsel would reiterate the bank's stand that all procedural formalities were duly complied with and submit that the interim order dated 27.10.2016 passed by this Court, directing the fourth respondent not to create any encumbrances on the property, caused hardship in his lawful enjoyment thereof as he had purchased it for value in a valid public auction.

The primary ground of attack presently is that the failure of the bank in stating the mode, date and time of the sale in the notice dated 04.02.2015 would invalidate the same. It is true that the notice dated 04.02.2015 did not divulge these details. However, the question that arises is as to whether such a requirement is contemplated at all by law. Sri M.S.Prasad, learned senior counsel, would place reliance on the interpretation of Rules 8 and 9 of the

Rules of 2002 by the Supreme Court in **MATHEW VARGHESE V/s. M.AMRITHA KUMAR**³ and, more particularly, Para 31 thereof. However, perusal of this paragraph does not lend it to the interpretation sought to be drawn by the learned senior counsel in as much as the Supreme Court never postulated therein that the notice under Rule 8(6) of the Rules of 2002 must disclose the mode, date and time of the proposed sale. The Supreme Court only held therein that while the publication in the newspapers should provide thirty days' clear notice, a clear notice of thirty days should also be ensured as stipulated under Rule 8(6) as well. This judgment is therefore of no avail.

Strong reliance was also placed upon **CANARA BANK**¹ by Sri M.S.Prasad, learned senior counsel, in this regard. The issue considered by the Supreme Court in this decision was whether this Court was right in holding that a secured creditor must put the borrower on separate individual notice prior to deciding on the mode of sale of the secured asset and that such further notice should be in addition to the notice of thirty days duration to be given by the secured creditor, conveying the intention to put the secured asset on sale. Notice under Rule 8(6) of the Rules of 2002 was issued by the Canara Bank on 15.10.2015 giving the borrower one last and final opportunity to discharge the debt within thirty days therefrom. A copy of the e-auction notice of the same date under Rule 9(1) of the Rules of 2002 was also enclosed along with the said communication, indicating that the date of the sale was fixed as 21.11.2015. The contention advanced by the borrower before this Court was that the e-auction notice dated 15.10.2015

³ (2014) 5 SCC 610

was illegal. Accepting the same, this Court took the view that a separate notice of thirty days' duration ought to have been given by the bank to the borrower before the public notice fixing the date of auction sale was issued, as both the notices could not be issued simultaneously. This Court construed Rule 8(6) of the Rules of 2002 to mean that a notice of intended sale of the secured asset must be de-linked from the actual sale notification to be published in two newspapers. This Court took the view that it was imperative for a secured creditor to put the borrower on notice of thirty days duration about the intention to sell the secured asset and the mode of the sale and this should precede the issuance of a public notice for sale.

In appeal in **CANARA BANK¹**, upon considering the legal position, the Supreme Court observed as under:

“To put it differently, the only restriction placed on the secured creditor is to serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale; and also to issue a public notice in two leading newspapers, if the sale of such secured asset is effected either by inviting tenders or by holding public auction, notifying the date of sale after 30 clear days from such notice. There is no need to wait for the expiry of 30 days from issuance of notice of intention to sell the secured asset given to the borrower, for publication of a public notice for sale of such asset. Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset. To the above extent, the opinion of the High Court in the impugned judgment will have to be overturned.”

Sri M.S.Prasad, learned senior counsel, would rely upon the sentence “..the only restriction placed on the secured creditor is to

serve a notice of 30 days on the borrower intimating him about its intention to sell the immovable secured asset and the mode and date fixed for sale..”, in the above paragraph and contend that the notice issued under Rule 8(6) of the Rules of 2002 must itself convey the mode and the date fixed for sale. He would submit that as the notice dated 04.02.2015 failed to furnish these details, it does not meet the requirement of law as spelt out by the Supreme Court.

This argument however merits no consideration.

Rules 8(5) and (6) of the Rules of 2002, as they stood at the relevant point of time, read as under:

“8(5): Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:--

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- (b) by inviting tenders from the public;
- (c) by holding public auction; or
- (d) by private treaty.

8(6): the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,--

- (a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) the secured debt for recovery of which the property is to be sold;
- (c) reserve price, below which the property may not be sold;
- (d) time and place of public auction or the time after which sale by any other mode shall be completed;
- (e) depositing earnest money as may be stipulated by the secured creditor;
- (f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.”

Rule 9(1), as it stood then, is also relevant and reads as under:

9. Time of sale, issue of sale certificate and delivery of possession, etc:--

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

A cumulative overview of the aforesaid rules and the statutory scheme envisaged thereunder makes it clear that the authorized officer of the secured creditor shall serve to the borrower a notice of thirty days conveying the intention to sell the immovable secured assets. As per Rule 8(5), such sale can be made by him either by obtaining quotations from persons dealing with similar secured assets or otherwise interested in buying such assets or by inviting tenders from the public or by holding a public

auction or by private treaty. At this stage, the authorized officer is not required to disclose the date of actual sale or the mode thereof. It is merely intimation to the borrower of the intention of the secured creditor to sell the property, giving a clear thirty days notice period.

The *proviso* to Rule 8(6) stipulates that if the sale is intended to be effected by inviting tenders from the public or by holding a public auction, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language, setting out the terms of sale as stipulated in clauses (a) to (f) thereof. It may be noted that the time and place of the sale find mention in clause (d). Rule 9(1) states that when such a notice is published in newspapers, as referred to in the *proviso* to Rule 8(6), the sale of such immovable property cannot take place before expiry of thirty days from the date of such publication or notice of sale has been served to the borrower.

Though the Supreme Court interpreted the word 'or' in Rule 9(1) to mean 'and' in **MATHEW VARGHESE**², the lawmakers, in their wisdom, while amending this rule with effect from 04.11.2016, *vide* G.S.R.1046(E) dated 03.11.2016, again repeated the word 'or' and did not substitute it with the word 'and' in terms of **MATHEW VARGHESE**². Be that as it may.

The details of the time and place of the auction therefore require to be mentioned only in the notice under Rule 9(1) of the Rules of 2002, as per clause (d) in the *proviso* to Rule 8(6) thereof. Rule 8(6), by itself, only speaks of service upon the borrower of a notice of thirty days for sale of the immovable secured assets under sub-rule (5) and no more. It does not state that the

authorized officer has to indicate therein the mode that he seeks to take recourse to for sale of such secured assets. This is obviously because an option would still be available at that stage to not only the authorized officer but also the borrower to obtain proposals from third parties and take recourse to Rule 8(5)(d), so that the property in question may be sold privately without further ado.

Though Sri M.S.Prasad, learned senior counsel, seeks to rely upon one sentence in Para 16 of **CANARA BANK**¹, it is pertinent to note that a later sentence in the very same paragraph puts it beyond doubt that the Supreme Court did not interpret Rule 8(6) to mean that the notice issued thereunder should itself indicate the mode and date fixed for the sale. This is clear from the later sentence: *“Nor is there any requirement to give a separate individual notice prior to deciding on the mode of sale of the secured asset”*. Therefore, information with regard to the mode of sale is to be conveyed only by the public notice under Rule 9(1) and not in the initial notice issued under Rule 8(6) of the Rules of 2002. Any interpretation to the contrary would do violence to the clear mandate of the rules. The argument of Sri M.S.Prasad, learned senior counsel, to the contrary is accordingly rejected.

As regards the contention of Sri M.S.Prasad, learned senior counsel, that the reserve price fixed by the bank was not in keeping with the market value, no material whatsoever has been produced to support this allegation. Further, it appears that this ground was not even taken by the petitioner firm either before the Tribunal or before the Appellate Tribunal. It is sought to be raised for the first time before this Court. When the petitioner firm seeks a *writ of certiorari* to quash the orders passed by the Tribunal and

the Appellate Tribunal, it is not open to it to come up with a new ground altogether at this stage. That apart, as stated *supra*, the petitioner firm did not even place before this Court any material in proof of the alleged undervaluation of the property by the bank. This Court is therefore not inclined to entertain this contention or adjudicate upon it on merits. Further, the half-hearted attempt on the part of the petitioner firm in November, 2015 to redeem the secured asset, long after its sale in March, 2015, needs to be mentioned only to be rejected. The statutory scheme of the SARFAESI Act does not recognize or lend any value to such lame and belated efforts by a borrower to undo a concluded sale transaction effected under Section 13(4) of the SARFAESI Act.

On the above analysis, no illegality is demonstrated in the proceedings initiated by the bank under the SARFAESI Act, culminating in the sale held on 23.03.2015, whereby the fourth respondent/auction purchaser was sold the secured asset. Further, no grounds have been established warranting interference with the orders of the Tribunal and the Appellate Tribunal.

The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 27.10.2016 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

P.KESHAHA RAO,J

20th FEBRUARY, 2018

L/ R copy to be marked - Yes
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