

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40841 OF 2018

DATED :15.11.2018

Between :

Mr.Guvvala Rama Reddy S/o.Guvvala Abbulu,
Aged about 40 yrs, Occu : Agriculture,
R/o.D.No.5-102, Gandepalli,
East Godavari District,
Andhra Pradesh State.

.. Petitioner

And

M/s.The Aryapuram Co-operative Urban Bank Limited,
Rep., by Authorised Officer cum Branch Manager,
Kakinada Branch, 20-1-44, Subhash Nagar,
Opp : SRMT, Main Road, Kakinada-533001,
East Godavari District, A.P. & others.

.. Respondents



This court made the following :

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ORDER :

Heard learned counsel for the petitioner, learned Government Pleader for Cooperation for respondents 3 and 4 and Sri N. Jayasurya, learned counsel appearing for respondents 1 and 2.

2. Petitioner availed loan for an amount of Rs.35 lakhs with interest @14% p.a., from the Aryapuram Co-operative Urban Bank Limited, for the purpose of construction. Petitioner entered into an agreement on 19.06.2012 agreeing to pay every month instalment @ Rs.59,636/- with a repayment period of nine and half years. As the petitioner defaulted in payments, he was served with notice fixing the auction of the property mortgaged. The auction was scheduled on 06.06.2016. Challenging the said auction, petitioner filed W.P.No.17349 of 2016. This Court by order dated 03.06.2016 stayed the auction scheduled on 06.06.2016, subject to petitioner paying a sum of Rs.5 lakhs within a period of two weeks from that date and another Rs.5 lakhs within a period of four weeks thereafter. The Court also ordered that in the event of petitioner failing to pay the amount, the interim stay granted would dissolve automatically.

3. Admittedly, the amount as directed by this Court was not paid and therefore, the interim stay granted stood dissolved. In terms thereof, it is always open to the respondents to proceed to

conduct auction. For the reasons best known, the respondent-bank waited for certain period and now issued notification for conducting of auction on 14.11.2018. At this stage petitioner instituted this writ petition challenging the notification to stall conducting of auction.

4. The respondent-Bank filed caveat and in the caveat petition respondent-bank narrated the history of litigation and the opportunity afforded to the petitioner.

5. On going through the averments in the affidavit filed in support of the writ petition, it is seen that there is no whisper about petitioner earlier filing the writ petition and this Court passing a conditional order. On the contrary in paragraph No.12, petitioner deposes that he did not file any similar writ petition.

6. A reading of the prayer sought by the petitioner in the earlier writ petition and in the present writ petition, it is the clever drafting adopted to mould the prayer in this writ petition, but the crux of the issue in both the writ petitions is same. The said writ petition is pending before this Court. Therefore, petitioner cannot try to circumvent the procedure and institute a fresh writ petition without disclosing the earlier writ petition pursued by him.

7. That apart no bonafides are shown by the petitioner in repaying the loan amount due from him, even though almost two and half years time was available to the petitioner. Since a conditional order was passed by this Court, till date not even single rupee was paid by the petitioner. Even now, learned counsel for the petitioner seeks twelve months time to pay the

amount already became over due long ago. This would clearly show that there are no bonafides in the petitioner in repaying the loan amount.

8. According to learned counsel representing the respondent-bank, auction was conducted on 14.11.2018 and the highest bidder offered Rs.94,60,000/-.

9. Having regard to the history of litigation and the fact that petitioner is not prosecuting the litigation in a bonafide manner, the Court is not inclined to entertain the writ petition.

10. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions shall stand closed.

15th November, 2018
Rds

P.NAVEEN RAO,J

