

**HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Delivered on: 28-02-2019

Coram :

**The Honourable Mr. Justice V. RAMASUBRAMANIAN
and
The Honourable Dr. Justice SHAMEEM AKTHER**

Writ Petition Nos.147, 1230 And 1343 OF 2019

Between:

W.P. No.147/2019:

1. G. Jai Paul S/o late Dr.G. Sunder Paul,
 2. A. Titus Rajender S/o A. Rajender John,
 3. G. Machael Manohar S/o G. David
- .. Petitioners

And

1. Punjab National Bank, New Delhi,
 2. Authorized Officer, Punjab National Bank, Hyd.
 3. Bank of Maharashtra, Pune,
 4. Authorized Officer, Asset Recovery Management Br., Hyd.
 5. Syndicate Bank, Manipal, Karnataka,
 6. Authorized Officer, Syndicate Bank, Hyderabad.
 7. Dr.P.B. Arnoid S/o Benjamin,
 8. Dr.R.S. Lemuel S/o R. Samson,
 9. Dr.N.I. Livingston S/o Izaiah,
 10. K.E. John Wesley S/o K.Enoch.
 11. Dr.K. Krishna Reddy S/o late K. Janga Reddy,
 12. Dr. K. Vijay Shekar Reddy S/o late K. Ramachandra Reddy,
 13. Dr.B. Sugunakar Reddy S/o B. Narsimha Reddy,
 14. Dr.K. Lalitha Reddy W/o Dr.K. Vijayshekar Reddy,
 15. Dr. A. Prashanth Reddy S/o late A. Sudhakar Reddy,
 16. B. Shailaja W/o Dr.B. Sugunakar Reddy,
 17. Challa Ram Reddy S/o Ch. Mohan Reddy,
 18. V. Amarender Reddy S/o late V. Sudharshan Reddy,
 19. K.S. Reddy S/o late K. Janga Reddy.
 20. M/s. Mennonite Brethren Property Assn. of India Pvt.Ltd.
- .. Respondents

W.P. No.1230/2019:

M/s. Mennonite Brethren Property Association of India
Pvt. Ltd., rep.by its Vice President - cum - Authorized
Signatory Dr.Anuradha Margaret

.. Petitioner

And

1. The Union of India, New Delhi,
2. The Punjab National Bank, New Delhi,
3. The Authorized Officer, Punjab National Bank, Hyd.

4. The Zonal Manager, Punjab National Bank, Chennai,
5. The Bank of Maharashtra, Pune,
6. The Authorized Officer, Bank of Maharashtra, Hyd.
7. Syndicate Bank, Manipal, Karnataka State
8. The Authorized Officer, Syndicate Bank, Hyd. .. Respondents

W.P. No.1343/2019:

M/s. Mennonite Brethren Property Association of India
Pvt. Ltd., rep.by its Director Mr. S.S. Jaffania .. Petitioner

And

1. The Union of India, New Delhi,
2. The Punjab National Bank, New Delhi,
3. The Authorized Officer, Punjab National Bank, Hyd.
4. The Authorized Officer, Bank of Maharashtra, Hyd.
5. The Authorized Officer, Syndicate Bank, Hyderabad
6. The Governing Council of Conference of Mennonite Brethren Church of India, rep.by its President, Mahabubnagar. .. Respondents

For Petitioners in WP No.147/19 : Mr. P. Venugopal, Senior Counsel
for Mr. N. Praveen Kumar

For Petitioners in WP No.1230/19 : Dr. Kylashnath Pillay, Sr.Counsel
for Mr. Ch. Samson Babu

For Petitioners in WP No.1343/19 : Mr. T. Bala Mohan Reddy

For Respondent No.1 in
W.P.No.1230/19 and 1343/199 : Mr. G. Venkateshwarlu,
Central Govt. Counsel

For Respondents 1 to 4 in W.P.
No.147/19 & 2 to 6 in 1230/19 & :Mr.D. Prakash Reddy,Sr.Counsel
2 to 4 in W.P.No.1343/19 for Mr. N. Manohar Reddy
S.C. for Punjab National Bank &
for Mr. N. Meher Prasad,
S.C. for Bank of Maharashtra

For respondents 5 and 6 in
W.P. 147/19, 7 & 8 in W.P. : Mr. M.V.K. Viswanadham,
1230/19 and 5 in W.P.1343/19 : S.C. for Syndicate Bank

For respondent 7 to 10 in W.P.147/19: - -

For Respondent No.20
in W.P. No.147/19 & 6 in
W.P. 1343/19 : Mr. Ch. Samson Babu
For Respondent Nos.11 to 19 in : Mr. Vedula Venkata Ramana
W.P. No.147/19 Senior Counsel
for Mr. K. Ravinder Reddy

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

HONOURABLE SRI JUSTICE DR. SHAMEEM AKTHER

WRIT PETITION Nos.147, 1230 AND 1343 OF 2019

COMMON ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Challenging an *e-auction* notice, dated 12.12.2018, issued by the consortium of three banks viz., Punjab National Bank, Bank of Maharashtra and Syndicate Bank, the petitioners have come up with the above three Writ Petitions.

2. Heard Mr. P. Venugopal, learned senior counsel appearing for the petitioners in the first writ petition, Dr. Kylasanatha Pillay, learned senior counsel appearing for the petitioner in the second writ petition and Mr. T. Bala Mohan Reddy, learned counsel appearing for the petitioner in the third writ petition, Mr. D. Prakash Reddy, learned senior counsel appearing for two out of three members of the consortium of banks, Mr. M.V.K. Viswanadham, learned counsel appearing for the Syndicate Bank and Mr. Vedula Venkata Ramana, learned senior counsel appearing for the Highest Bidders in the auction.

3. It appears that the Governing Council of the Conference of Mennonite Brethren Church of India is a Society registered under the Hyderabad Societies Registration Act of 1958, having its registered office at Mahaboobnagar. The said Society approached a consortium of banks, viz., Punjab National Bank, Syndicate Bank and Bank of

Maharashtra, for the sanction of financial assistance for the establishment of a Medical College and Teaching Hospital in Mahaboobnagar District. With the Punjab National Bank being the lead bank, the consortium sanctioned the facilities of a term loan and bank guarantee. The total amounts sanctioned by the consortium are presented in a tabular column as follows:

Sl. No.	Nature of facility	Punjab National Bank	Syndicate Bank	Bank of Maharashtra	Total Limits (Fig.in Crores)
1.	Term Loan	15.50	7.30	8.20	31.00
2.	Bank Guarantee	3.50	1.70	1.80	7.00
Total		19.00	9.00	10.00	38.00

4. For the loans sanctioned as aforesaid, a company by name M/s. Menonite Brethren Property Association of India Private Limited (MBPAIPL), registered under the Companies Act, 1956, stood guarantee. As owners of two different landed properties situate in Mahaboobnagar, the said Private Limited Company also created a security interest in favour of the consortium of banks, as collateral security for the due repayment of the loans.

5. Since the Society committed default in making payment, the consortium of banks filed an application in O.A. No.382 of 2014 on the file of the Debts Recovery Tribunal (DRT), Hyderabad. It appears that the DRT, Hyderabad issued a Certificate of Recovery for a sum of Rs.32,72,08,520.74ps.

6. In the meantime, the banks also initiated measures under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002'). A

demand notice was issued on 15.04.2010 under Section 13 (2) of the Act, 2002, followed by a possession notice, dated 08.12.2010. It appears that thereafter the properties were brought to sale several times, but the auctions could not materialize. One of the reasons attributed by the banks for the auction not materializing several times, is the fact that either the Governing Council of the Society or some members of the Society filed repeated writ petitions. In a counter affidavit filed by the Punjab National Bank in W.P. No.1230 of 2019, they have given the list of writ petitions filed either by the Society or by its individual members. These writ petitions were in W.P. Nos.23559 of 2015, 2376 of 2016, 7951 of 2016, 25171 of 2016 and 31117 of 2018. According to the bank, these writ petitions were either dismissed on the ground of availability of alternative remedy or on the ground that they had become infructuous after the auctions failed. But, the last of the writ petitions, W.P. No.31117 of 2018 was closed on 10.09.2018 on the basis of a statement made on both sides that the borrower was making payment under a One-Time Settlement (OTS) Scheme.

7. But, it appears that the OTS failed, due to non-compliance with the terms and conditions, within the stipulated time. Hence, the bank issued a paper publication on 12.12.2018 for the sale of the property and proceeded to conduct an auction on 07.01.2019. At that stage, three persons, viz., Mr. G. Jai Paul, Mr. A. Titus Rajender and Mr. G. Michael Manohar, claiming to be the members of the General

Body of the Society (which is the borrower) came up with a writ petition questioning the auction and also the questioning the right of the persons in management of the Society to create a mortgage. Since this Court had a doubt about the maintainability of the writ petition at the instance of individual members of a Society, this Court ordered notice in the writ petition subject to maintainability, on 04.01.2019. At the same time, the Authorized Officer was allowed to proceed with the auction but not to confirm the sale.

8. Therefore, the bank proceeded with the auction. In the auction so conducted, a group of persons became the successful bidders by quoting a sum of Rs.28.75 Crores as against the reserve price of Rs.20.00 Crores.

9. More than two weeks after the conduct of the auction, the aforesaid private limited company represented by a person claiming to be the Vice-President - cum - Authorized Signatory came up with the second writ petition, viz., W.P. No.1230 of 2019 challenging the auction notice. To be precise, W.P. No.1230 of 2019 was filed on 23.01.2019, exactly after sixteen (16) days of conduct of the auction.

10. On the very next day viz., 24.01.2019, the third writ petition, viz., W.P. No.1343 of 2019 came to be filed by the very same Company, viz., Mennonite Brethren Property Association of India Private Limited, but this time represented by a person claiming to be a Director of the company. But the prayer in the said writ petition is also the same as the prayer in the second writ petition.

11. Thus, we have on hand three writ petitions, the first of which was filed by three individual members of a Society (which was the borrower) registered under the Societies Registration Act and two writ petitions filed by a private limited company which stood guarantee for the loan and which mortgaged the property in question. While the first writ petition filed by the individual members was before the date of the auction, the other two were filed after 16/17 days of the conduct of the auction.

12. At the outset, it should be pointed out that the petitioners in W.P. No.147 of 2019 have no *locus standi* to file the writ petition challenging the action of the bank. Admittedly, the borrower was the Society and the Private Limited Company was the guarantor which offered the properties in question as collateral security. Therefore, neither the individual members of the Society nor the share-holders of the Private Limited Company are entitled to maintain a writ petition as against the measures taken by the banks for the recovery of their dues. The management of a Society vests under the Societies Registration Act, with an elected body known as the Committee of Management. It is only through a person authorized by the bye-laws of the Society that the Society can ventilate its grievances in a Court of law. If all individual members seek to move Courts for ventilating the grievances of the Society, there would be no end to litigation. If the Committee of Management fails to safeguard the interests of the Society, the only remedy open to the individual members is to take

recourse to the provisions of the bye-laws or the statute, to dethrone the members of the Committee of Management and elect a new body. The individual members of a Society, who failed to question the action of the Management in availing the loan from the banks, cannot now question the action of the banks in seeking recovery. Therefore, W.P. No.147 of 2019 is not maintainable and hence it is dismissed.

13. That leaves us with two writ petitions, both filed by one and the same Private Limited Company. The first of these two writ petitions is filed by a person claiming to be the Vice-President - cum - Authorized Signatory. But, even the *Vakalat* does not bear the rubber stamp of either the Private Limited Company or the Vice-President. The *Vakalat* in W.P. No.1230 of 2019 is signed by one Dr. Anuradha Margaret. There is no rubber stamp or seal either of her position as the Vice-President or of her position as the Authorized Signatory of the Company. Neither a letter of authorization nor a resolution of the Board of Directors of the Private Limited Company is filed. Therefore, it is not known as to how W.P. No.1230 of 2019 could have been filed. As rightly pointed out by Mr. M.V.K. Viswanadham, learned counsel appearing for the Syndicate Bank, lack of evidence of authorization, would turn the W.P. No.1230 of 2019 into a mere paper without any weight. Though unreported decision of the Supreme court relied upon by Mr. M.V.K. Viswanadham, learned counsel for the Syndicate Bank in **State Bank of Travancore v. M/s. Kingston**

Computers (I) P. Ltd.,¹ arose in the context of civil proceedings, to which strict rules of the Code of Civil Procedure would apply, there is no bar for this Court at least to question the authority under which Dr. Anuradha Margaret moved W.P. No.1230 of 2019.

14. It appears from the submissions made by Mr. T. Bala Mohan Reddy, learned counsel appearing for the very same Private Limited Company represented by its Director in W.P. No.1343 of 2019 that the Board of Directors of the Private Limited Company are engaged in an *inter see* dispute, which perhaps has given rise to a person claiming to be the Vice-President moving the second writ petition. Though in W.P. No.1343 of 2019, the *vakalat* and the affidavit in support of the writ petition are signed by one Mr. S.S. Jaffania along with the rubber stamp of the company, the resolution of the Board of Directors authorizing him to move this Court, especially in the light of the existence of a dispute, is not filed.

15. Keeping in mind all the above defects with which the Private Limited Company has supposedly come up with W.P. Nos.1230 and 1343 of 2019, let us now consider the submissions made on behalf of the Private Limited Company by Dr. Kylasanatha Pillay, learned senior counsel. The main contention of the learned senior counsel for the petitioner company is that by a letter, dated 29.09.2018, an OTS was sanctioned by the Bank of Maharashtra and that towards payment under the said settlement; the petitioner has

¹. Civil Appeal No.2014 of 2011, dt.22.02.2011

already paid a sum of Rs.1.00 Crore to the Punjab National Bank and Rs.30.00 lakhs to the Bank of Maharashtra. According to the learned senior counsel, though the petitioner could not pay the entire amount as fixed under the OTS, within the time stipulated therein, they have made part payments, without noticing which the authorized officer proceeded with the auction. In addition, it is the contention of the learned senior counsel for the petitioner company that there was no clear time gap of thirty (30) days between the date of publication of the notice under Rule 8 (6) and the date fixed for sale. While the notice under Rule 8 (6) was published on 12.12.2018, the date of the auction was fixed on 07.01.2019. Therefore, it is contended by the learned senior counsel that the auction was clearly in violation of the law laid down by this Court in **M/s. Venshiv Pharma Chem (P) Ltd. v. State Bank of India, Hyderabad**².

16. In a nutshell, the contentions of Dr. Kylasanatha Pillay, learned senior counsel for the petitioner company are three fold, viz., (i) that the mandatory requirement of leaving a gap of thirty (30) days between the date of notice under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, and the date of auction under Rule 9 (1) was flouted; (ii) that the amounts reflected in the sale notice, dated 12.12.2018 are completely incorrect, inasmuch as the payments made pursuant to the OTS were not taken into account; and (iii) that as on date, the dues to the Bank of Maharashtra are completely discharged,

². 2018 (3) ALT 168

despite which the auction has proceeded at the behest of the consortium of the banks.

17. We have carefully considered the above submissions.

18. At the outset, all the above three contentions were not raised by the petitioner company in the affidavit in support of the writ petition. They were raised only in the reply to the counter affidavit. Though the learned senior counsel for the petitioner company contended that these are only questions of law, which need not find part of the pleadings, we do not agree. The reason is that the allegation of non-compliance with the mandate of law should have its foundation on facts. But without putting these technicalities, we would consider the contentions.

19. In so far as the first contention is concerned, it is only for the first auction sale that the Rules stipulate a time gap of thirty (30) days. But, for subsequent sales, the time gap stipulated is only fifteen (15) days. According to the learned senior counsel for the banks, the auction held on 07.01.2019 was the fifth auction. Therefore, a time gap of fifteen (15) days was sufficient. Hence, the first contention does not hold water.

20. The second and third contention of the petitioners cannot be countenanced. The law does not mandate that every time a rupee is paid, the next auction sale notice should indicate the amount remaining unpaid as on that date. The reason for mentioning the

amount due in the auction notice, is to enable the borrower or the guarantor to make payment and redeem the property. If the petitioners were really interested in redeeming the property, they could have come up with an amount representing the balance. Even now they have not come up with money. The Bank will certainly adjust the payments already made before closing the account. Therefore, this cannot be a ground for setting aside the auction.

21. In any case, the second and third contentions of the learned senior counsel for the petitioner company revolve entirely around facts. Despite the fact that the bank issued a notice under Section 13 (2) of the Act, 2002 way back on 15.04.2010 and a possession notice under Section 13 (4) of the Act, 2002 on 08.12.2010, neither the petitioner nor the Society has chosen to go so far to the DRT. The DRT is a Special Tribunal created for adjudication of all legal and factual aspects. In fact, it appears from the counter affidavit filed by the bank that the petitioner company or the Society or its members have been repeatedly knocking at the doors of this Court by way of writ petitions from the year 2015 without ever going to the Tribunal.

22. The Supreme Court has repeatedly held that bypassing of alternative remedies should not be permitted as a matter of routine. No special reasons are indicated in the writ petitions for bypassing the alternative remedy. In fact, from the year 2010 till date, the

measures initiated by the bank under Section 13 (4) of the Act, 2002 have not been questioned before the DRT.

23. Therefore, the Writ Petitions are devoid of merits and hence, they are dismissed. However, in the circumstances, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petitions, shall stand closed.

V. RAMASUBRAMANIAN, J

DR. SHAMEEM AKTHER, J

February 28, 2019
Mgr

