

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.7339 of 2019

ORDER:

This Writ Petition is filed with the following prayer:

“...to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the decision of the Respondent No.1 dt.03.04.2019 that it will not transfer the original documents of the property of the Respondent No.3 to the petitioner and it will only be released and returned to Respondent No.3 as arbitrary, illegal, capricious and violative of principles of natural justice and against the provisions of Section 141 of the Indian Contract Act read with Section 91 of the Transfer of Property Act and consequently direct the Respondent No.1 to accept the Demand Drafts dated 27.03.2019 for Rs.33,75,000/- towards discharge of the total outstanding liability in the Respondent No.2 account and deliver all the securities available in the account of the Respondent No.2 and also execute the Registered Assignment Deed in favour of the petitioner at the costs and expenses of the petitioner and pass such other....”

Heard Sri V.Murali Manohar, learned counsel for the petitioner and Sri Vedula Srinivas, learned counsel appearing for respondent No.3.

In this case, it is to be seen that the writ petition is filed purely for enforcing contractual obligations and no public element is involved. The 1st respondent Bank, out of pure contractual obligations, granted loans to respondents 3 & 4, to which, petitioner stood as surety and that he paid entire loan amount. Now, the petitioner filed this writ petition seeking a direction for return of the documents mortgaged by the 3rd respondent stating that he has paid entire amount.

Counter affidavit is filed by the 3rd respondent stating that when the 1st respondent Bank initiated proceedings under SARFAESI Act by issuing notice under Section 13(2) of the Act, the property of the 3rd respondent was sold for Rs.1,35,58,813/- and appropriated the same towards payment of loan account and the 3rd respondent also paid Rs.52,04,000/- and disputed the fact of petitioner paying the entire loan amount.

When there is no public law element involved in the contractual matters, the writ petition is not maintainable for enforcing the same, as held by the Hon'ble Apex Court in the case of **K.K.Saksena v. International Commission on Irrigation and Drainage¹** and **Joshi Technologies International Inc. v. Union of India²**.

That apart, petitioner has suppressed the fact of sale of property of the 3rd respondent by the 1st respondent in an auction. It is not the case of the petitioner that he is not having alternative efficacious remedy by way of approaching civil Court.

Though the learned counsel for the petitioner relied on the judgments of Hon'ble Supreme Court in the case of **Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.Rudani³** and

¹ (2015) 4 Supreme Court Cases 670

² (2015) 7 Supreme Court Cases 728

³ AIR 1989 SC 1607: (1989)2 SCC 691

Muhammed Sherieff K.S. v. The Registrar of Co-operative Societies⁴, the same are distinguishable on facts, in view of law laid down by the Hon'ble Supreme Court in **K.K.Saksena (supra)** and **Joshi Technologies International Inc (supra)**.

In view of above facts and circumstances, I do not see any reason to entertain the writ petition. However, the petitioner is at liberty to avail common law remedy available to him under law, if he is so advised.

With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

28-10-2019
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⁴ 2016 (2) KHC 665: 2016(2)KLJ 592

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Date 28.10.2019.

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