

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA**

WRIT PETITION NO: 21318 OF 2022

Between:

P.Satyajith Reddy, S/o P.Ram Reddy, Aged about 54, Occ ; Business, R/o Flat No.B1, Green View Apartments Journalist Colony, Jubilee Hills, Hyderabad.

...PETITIONER

AND

1. Canara Bank, Specialized Mid Corporate Branch Vista Grand Tower, Rajbhavan Road, Rep. by its Authorized Officer.
2. M/s LN Constructions, Rep.by its Managing Partner Sri S. Vinay Kumar Reddy @ Flat No.107, Karan Residency Green View Lane, Bowenpally, Sec Hyderabad.
3. K.R.Sudarshan Reddy, S/o Late K.R.Govind Reddy, Aged about 64 years Occ ; Business, AF-3, Stone Valley Apartment, Road No.4, Banjara Hills, Hyderabad-34.

...RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass order or orders direction more particularly in the nature of Writ of Mandamus or any other appropriate writ, order or direction to set aside the E-Auction Sale notice dated 13/04/2022 fixing the date of Auction on 30/04/2022 on the schedule property-b as illegal, null and void without following due process of law.

I.A.NO:2 OF 2022

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay of all further proceedings in pursuance of the E- Auction Sale notice dated 13/04/2022 fixing the date of Auction on 30/04/2022 on the schedule property-b including confirmation of sale, issuance of the sale certificate and registration of the same.

I.A.NO:1 OF 2022

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent bank to release the schedule property-b and adjust the paid amount Rs.85,00,000/- date- 10-02-2020 in to the main Loan Account and Pending disposal of the appeal.

Counsel for the Petitioner : SRI.K.R.SUNIL KUMAR

Counsel for the Respondents : SRI.A.V.S.S.PRASAD

The Court made the following ORDER

THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE MRS JUSTICE SUREPALLI NANDA
WRIT PETITION No.21318 of 2022

ORDER: *(Per Hon'ble Sri Justice Ujjal Bhuyan)*

Heard Mr. K.R.Sunil Kumar, learned counsel for the petitioner and Mr. A.V.S.S.Prasad, learned counsel for respondent No.1.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of E-auction sale notice dated 13.04.2022 proposing to hold auction sale on 30.04.2022 of the B-Schedule property.

3. We find that petitioner had earlier approached this Court by filing W.P.No.30146 of 2021, which was disposed of on 25.11.2021 in the following terms:

"2. It appears that petitioners had availed financial assistance from respondent No.1/Canara Bank, but defaulted in repayment. As a result, respondent No.1/Canara Bank invoked the

— —

provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly 'the SARFAESI Act' hereinafter) leading to issuance of possession notice under Section 13(4) thereof. Thereafter, sale notice dated 13.10.2021 was issued by the Authorised Officer of respondent No.1/Canara Bank for sale of immovable properties (secured asset) on 29.11.2021.

3. It is stated that aggrieved by the aforesaid action, petitioners had moved the Debts Recovery Tribunal-II, Hyderabad (Tribunal) under Section 17 of the SARFAESI Act which has been registered as S.A.No.232 of 2021. However, the office of Presiding Officer fell vacant on 18.11.2021 due to retirement of the incumbent officer on attaining the age of superannuation. It is at this stage that petitioners have approached this court by the present writ petition.

4. According to Mr.Dishit Bhattarjee, learned counsel for respondent No.1/Canara Bank, S.A.No.232 of 2021 was listed before the Tribunal on 17.11.2021, but Tribunal declined to stay the sale notice.

5. However, learned counsel for the petitioners submits that Presiding Officer did not want to hear the stay matter on the eve of his superannuation. Now, the office of Presiding Officer is vacant. Not only that, office of Presiding Officer in Debts Recovery Tribunal-1, Hyderabad is also vacant. An aggrieved person cannot be left remediless in such a situation.

6. Having regard to the orders passed by this court in identical matters, we direct respondent No.1/Canara Bank not to take further steps pursuant to sale notice dated 13.10.2021 for a period of 45 days from today. It is expected that the office of Presiding Officer of the Tribunal will be filled up by that time and S.A.No.232 of 2021 will be taken up for consideration. No further order is called for at this stage.

7. Writ petition is disposed of."

4. Thereafter petitioner again approached this Court by filing W.P.No.11515 of 2022 with the grievance that respondent No.1 had issued fresh sale notice dated 18.02.2022 proposing to hold auction sale of the schedule property on 08.03.2022. This Court by the order dated

04.03.2022 disposed of the writ petition by directing that if the petitioner deposits 15% of the outstanding dues within 30 days, respondent No.1 would not proceed further with the sale notice dated 18.02.2022. Relevant portion of the order dated 04.03.2022 reads as under:

"4. This Court, by order dated 25.11.2021, in Writ Petition No.30146 of 2021, directed respondent No.1/Canara bank not to take further steps pursuant to the sale notice dated 13.10.2021 for a period of forty-five (45) days. The said period of forty-five (45) days has expired. On such expiry, respondent No.1-Canara Bank has issued fresh sale notice dated 18.02.2022 proposing to hold auction sale of the schedule property on 08.03.2022.

5. From the sale notice dated 18.02.2022, we find that the outstanding dues of the petitioners has been quantified by respondent No.1 at Rs.8,38,24,337.74 as on 31.01.2022.

6. With the grievance that there is still no Presiding Officer in the Tribunal, the present writ petition has been filed.

7. Upon hearing learned counsel for the petitioners and on due consideration, we are of the view that since petitioners have invoked their statutory remedy before the Tribunal under Section 17 of the SARFAESI Act it would be just and proper if the petitioners pursue their remedy in accordance with law. Further, if the petitioners deposit 15% of the outstanding dues, as mentioned above, within a period of thirty (30) days from to-day, respondent No.1 shall not proceed further on the basis of the sale notice dated 18.02.2022 which, in any event, would be subject to outcome of S.A.No.232 of 2021, pending before the Tribunal.

8. However, we make it clear that if there is any default on the part of the petitioners in making the payment as above, it would be open to respondent No.1 to proceed against the petitioners for realisation of the outstanding dues in accordance with law.

9. This disposes of the writ petition. No order as to costs."

5. From the order dated 04.03.2022, we find that this Court had directed that if the petitioner deposited 15% — —

of the outstanding dues within 30 days, respondent No.1 would not proceed with the sale notice but had made it clear that if there was any default on the part of the petitioner in making the payment as above, it would be open to respondent No.1 to proceed against the petitioner for realization of outstanding dues in accordance with law.

6. Now respondent No.1 has issued sale notice dated 13.04.2022 proposing to hold auction sale of five schedule properties on 28.04.2022. Outstanding dues of the petitioner has been quantified at Rs.9,07,39,295.00.

7. Learned counsel for respondent No.1 submits that petitioner did not deposit 15% of the outstanding dues in terms of order dated 04.03.2022, for which respondent No.1 has issued the impugned sale notice dated 13.04.2022.

8. According to learned counsel for the petitioner, he and his friend one Mr. S.Srinivas had obtained loan of Rs.94,50,000.00 from TATA Capital, wherefrom

Rs.85,00,000.00 was paid to respondent No.1 on 10.02.2020. Therefore, it cannot be said that petitioner has not complied with the order dated 04.03.2022.

9. Learned counsel for respondent No.1 submits that there appears to be a dispute between partners of the firm M/s. LN Constructions. In this connection, the other partner has moved the Commercial Court. The amount of Rs.85,00,000.00 deposited by the petitioner has been kept in a suspense account; and not credited into the loan account of the petitioner. He submits that because of the dispute between the partners, respondent No.1 has not appropriated the said amount to the loan account of the petitioner.

10. In such circumstances, it cannot be said that petitioner has not complied with the order of this Court. If that be so, respondent No.1 was not justified in issuing the sale notice dated 13.04.2022.

11. That being the position, we direct that respondent No.1 would be at liberty to appropriate the

amount of Rs.85,00,000/- deposited by the petitioner to the loan account of the petitioner. That apart, petitioner shall deposit further amount of Rs.50,00,000/- within two (02) weeks from today. If such payment is made, respondent No.1 shall not proceed further with the sale notice dated 13.04.2022 in respect of schedule property-B, which in any event shall be subject to S.A.No.232 of 2021 filed by the petitioner and which is pending before the Debts Recovery Tribunal-II, Hyderabad.

12. This disposes of the Writ Petition. However, there shall be no order as to costs.

13. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

SD/-K.ONESIM
ASSISTANT REGISTRAR

//TRUE COPY//

AAH
SECTION OFFICER

To

1. The Authorized Officer, Canara Bank, Specialized Mid Corporate Branch Vista Grand Tower, Rajbhavan Road.
2. The Managing Partner, M/s LN Constructions, Sri S. Vinay Kumar Reddy @ Flat No.107, Karan Residency Green View Lane, Bowenpally, Sec Hyderabad.
3. One CC to SRI.K.R.SUNIL KUMAR, Advocate [OPUC]
4. One CC to SRI.A.V.S.S.PRASAD, Advocate [OPUC]
5. Two CD Copies
6. One spare copy

S.A

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HIGH COURT

DATED:27/04/2022

ORDER

WP.No.21318 of 2022



DISPOSING OF THE W.P
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