

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

**TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

PRESENT

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

WRIT PETITION NO: 20288 OF 2021

Between:

Killamsetty Venkata Prasad Rao, S/o.Killamsetty Raghavulu, Aged 61 Years,
Occ. Advocate, R/o.Plot No.95, H.No.1-4-212/95, Green Park Enclave, Near
Vijaya High School, Kapra, R.R.District-500 062.

...PETITIONER

AND

1. The Authorized Officer, State Bank of India, Stressed Assets Recovery Br-2,
H.No.1-8-563/ 1, 1st Floor, RTC X Roads, Chickadpally, Hyderabad-500 020.
2. The Chief Manager, PBB, State Bank of India, S.P.Road, Secunderabad.
3. Sri Dasari Sunil, S/o.D.Narsingh Rao, Aged. Major, Occ. SBI Bank Employee,
R/o.Plot No.2, H.No.1-3-49/ 182, Janaki Nagar Colony, Old Alwal,
Secunderabad-50U 010.

...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 or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ, declare the Docket Order dt.24.08.2021 in 1.A NO.1272/21 in SA No.165/2020 passed by the Debt Recovery Tribunal-2, Hyderabad, as illegal, arbitrary, unjust and unconstitutional and consequently set aside the sale conducted by the 1st respondent on 22.03.2021 in favour of the 3rd respondent, who is SBI Bank Manager, as illegal, arbitrary, violation of provisions of SARFAESI Act and Rules, 2002, violation of principles of natural Justice and also violation of Article 300-A of Constitution of India.

IA NO: 1 OF 2021

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 grant stay of all further proceedings initiated by the 1st respondent bank in trying to take physical possession of the schedule property through advocate commissioner letter dated 21.8.2021 vide CrI.MP No. 175/2021 on the file of I Addl.Senior Civil Judge-cum-Chief Metropolitan Magistrate, R.R.Dist., at LBNagar pursuant to Orders dated 28.07.2021.

IA NO: 2 OF 2021

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 grant stay of registration of Sale Certificate in favour of 3rd respondent/SBI Bank Manager, pursuant to the sale conducted on 22.03.2021 by the respondent vide Sale Notice dt.04.03.2021 in respect of schedule property, pending disposal of the present Writ Petition.

Counsel for the Petitioner: SRI G.K.DESHPANDE

Counsel for the Respondent Nos.1 &2: ARUN KUMAR SATYAVOLU

Counsel for the Respondent No.3: SRI A.V.S.S.PRASAD

Counsel for the Respondent No.4: None Appeared

The Court made the following: ORDER

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

W.P.NO.20288 OF 2021

ORDER : (Per Hon'ble Mrs Justice Surepalli Nanda)

1. This is a writ petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus to declare the Docket Order, dated 24.08.2021, in I.A.No.1272 of 2021 in S.A.No.165 of 2020 passed by the Debt Recovery Tribunal - II, Hyderabad, as illegal and arbitrary and consequently, set aside the sale conducted by the 1st respondent on 22.03.2021 in favour of the 3rd respondent - State Bank of India, Bank Employee, as the sale was held in violation of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules,

2002(for short 'the Act and the Rules framed thereunder).

2. The case of the petitioner, in brief, is as follows:

The petitioner filed S.A.No.165 of 2020 challenging the measures initiated by the 1st respondent bank pursuant to the sale notice, dated 03.10.2020, by fixing the date of auction on 11.11.2020. The auction was not held on 11.11.2020 and thereafter, on 30.12.2020 and on 10.02.2021 for want of bidders, but the 1st respondent issued another sale notice on 04.03.2021, the same was published on 05.03.2021. That sale notice was not served on the petitioner. The petitioner came to know that on 23.03.2021 the 1st respondent had conducted the sale and the 3rd respondent had become the successful bidder. The petitioner filed I.A.Nos.681 and 682 of 2021 seeking amendment and stay of further proceedings including issuance of sale certificate in

favour of the 3rd respondent. While those petitions were pending, the 1st respondent filed Crl.M.P.No.175 of 2021 under Section 14 of the Act in the Court of the Chief Metropolitan Magistrate-cum-1 Additional Senior Civil Judge, Ranga Reddy District and obtained warrant on 28.07.2021 for taking possession of the subject property viz. residential house. The amount due to the bank is only Rs.30,03,859/- (Rupees thirty lakhs three thousand eight hundred and fifty nine only). The petitioner obtained two demand drafts, one for Rs.15,03,859/- (Rupees fifteen lakhs three thousand eight fifty nine only) and another for Rs.15,00,000/- (Rupees fifteen lakhs only) drawn on South Indian Bank Limited towards discharge of the debt. The petitioner filed I.A.Nos.1271 and 1272 of 2021 seeking amendment and stay of all further proceedings pursuant to the order in Crl.M.P.No.175 of 2021. Respondents 1 to 3 filed counters to those petitions. After hearing both sides, the Debt Recovery Tribunal passed the impugned docket

order disposing of the I.A.No.1272 of 2021. The Tribunal without deciding the earlier petitions i.e. I.A.Nos.681 and 682 of 2021 allowed the 1st respondent bank to take possession of the subject property by dismissing I.A.No.1272 of 2021. The 1st respondent bank did not follow the procedure prescribed under Rules 5 and 8 of the Rules in conducting the sale.

3. The 1st respondent filed counter affidavit contending as follows:

The petitioner if aggrieved by the impugned order has right of appeal, but he did not choose to avail the appeal remedy and so, he cannot claim the relief under Article 226 of the Constitution of India. The petitioner approached this Court with unclean hands by suppressing the true facts. The petitioner did not evince any interest for repayment of the loan amount of Rs.27,78,422/-. That was why bank initiated the proceedings under the

Act. Possession notice was issued on 10.03.2020 in due compliance of the procedure prescribed under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. The petitioner did not choose to assail the possession notice, and so the bank issued sale notice and sold the subject property through E-auction sale by following the procedure prescribed under the Rules. The 3rd respondent, who is working in a different zone, took permission from the concerned authority of the bank for participating in the auction conducted by the bank. The petitioner deliberately neglected to discharge the debt and subsequent to issuance of the sale certificate produced two demand drafts. He filed the writ petition in abuse of process of the law and therefore, it is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the respondents. Perused the record.

5. The petitioner approached this Court by way of writ petition challenging the interlocutory order passed by the Tribunal in S.A.No.165 of 2020, now pending before the Tribunal. Section 18 of the Act provides for appeal against any order passed by the Debt Recovery Tribunal. The petitioner ought to have approached the Appellate Tribunal, if he is aggrieved by the impugned docket order. When such alternative statutory remedy is available, the petitioner wrongly approached this Court by way of this writ petition. When the securitization application is now pending before the Tribunal, the appropriate remedy for the petitioner against the impugned docket order is only by way of appeal before the Appellate Tribunal. Under Article 226 of the Constitution of India, this Court has got power of superintendence over the Tribunal and that power can be exercised only when any illegality or irregularity or irrationality or procedural irregularity is committed by the Tribunal.

6. A perusal of the impugned docket order does not show that the Tribunal indulged in any procedural impropriety in passing the order. Also there is no any irrationality or commission of illegality in the order. The interest of the petitioner is protected in view of the condition imposed by the Tribunal that any delivery of the physical possession of the petition schedule property pursuant to the order, dated 28.07.2021 passed in Crl.M.P.No.175 of 2021 is subject to the out come of the S.A.No.165 of 2020. The judgments relied upon by the counsel for the petitioner have no relevance to the facts of the present case and the order impugned therefore, does not warrant any interference by this Court in exercise of its supervisory powers under Article 226 of the Constitution of India.

7. In view of the foregoing discussion, we hereby hold that there is no merit in the writ petition and accordingly,

the writ petition is dismissed. There shall be no order as to costs.

8. Pending miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

SD/-K.SAILESHI
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. One CC to SRI G.K.DESHPANDE, Advocate [OPUC]
2. One CC to SRI ARUN KUMAR SATYAVOLU, Advocate [OPUC]
3. One CC to SRI A.V.S.S.PRASAD, Advocate [OPUC]
4. Two C.D. Copies
5. One Spare Copy.

MRC

PS

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HIGH COURT

DATED:12/04/2022

ORDER

WP.No.20288 of 2021



DISMISSING THE WRIT PETITION
WITHOUT COSTS

⑥ Copies

Qm

16/8/22