

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

WEDNESDAY, THE FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

WRIT PETITION NO: 13452 OF 2024

Between:

Maddineni Venkateswarlu, S/o M.Ramulu, aged 60 years, Occ- Agriculture,
R/o H.No. 6-9-40, Ganeshbasti, Kothagudem, Bhadradi Kothagudem District.
...PETITIONER

AND

1. The State Bank of India, (Erstwhile State Bank of Hyderabad) Represented by Branch Manager, Kothagudem Branch, Kothagudem. Bhadradi Kothagudem District.
2. M/s Sri Srinivasa Fastnethers, Industrial Estate, Kothagudem, Rep by Managing Partner IVSV Prasad.
3. Sri I.V.S.V.Prasad, S/o Not known, Occ- Business, aged about 50 years, R/o H.No. 689, Srinagar Colony, Kothagudem, Bhadradi Kothagudem District.
4. Mrs. I.Vaidarbhi, W/o IVSV Prasad, Aged about 45 years, occ- business, R/o H.No. 689, Srinagar Colony, Kothagudem, Bhadradi Kothagudem District.
5. Sri Srinikvasa Engineers, Rep by its partners, IVSV Prasad and B Sivarama Prasad, R/o H.No. 689, Srinagar Colony, Kothagudem, Bhadradi Kothagudem District.
6. Sri B Sivarama Prasad, C/o Srinivasa Engineering, Industrial Estate, Kothagudem, Bhadradi Kothagudem District.
7. Smt V. Durga Rani, W/o V.Suryanarayana Aged about 40 years, occ- house hold, R/o H.No. 6-90, Srinagar Colony, Kothagudem, Bhadradi Kothagudem District.
8. Smt Padma Leela, W/o M.Raja Babu, Aged about 40 years, occ- House hold, R/o Nargunkar Nagar, Kothagudem Bhadradi Kothagudem District.
9. AP State Financial Corporation, Chirag Ali-Lane, Hyderabad.
10. Sri Vadde Prasad, S/o Ramaiah, Aged 59 years, occ- Business, R/o H No. 23, Koyachalaka, Raghunathapalem Mandal, Khammam District.

(Respondents 2 to 9 are not necessary parties as per impugned orders)

...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 issue a writ order or direction more particularly one in the nature of Writ of Certiorari to call for records relating to Regular Appeal No. 66 of 2023 on the file of Honorable Debts Recovery Appellate Tribunal at Kolkata, arising out of RA No. 6 of 2016 in CP No. 12/2014 in RP No. 320/2003 in OA No. 1687/1999, and

consequently set aside the same and struck down the auction of land property admeasuring Ac. 1.03 Gts in Sy No. 294/A and 295/A at old Kothagudem Village, held on 15/05/2014 in the interest of justice

IA NO: 1 OF 2024

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 dispense with the filing of original certified copy of the impugned order in Appeal No. 66 of 2023 on the file of Honorable Debts Recovery Appellate Tribunal at Kolkata, arising out of RA No. 6 of 2016 in CP No. 12/2014 in RP No. 320/2003 in OA No. 1687/1999 in respect of property admeasuring Ac. 1.03 Gts in Sy No. 294/A and 295/A at old Kothagudem Village, in the interest of justice

IA NO: 2 OF 2024

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 the operation of judgment in Regular Appeal No. 66 of 2023 on the file of Honorable Debts Recovery Appellate Tribunal at Kolkata, arising out of RA No. 6 of 2016 in CP No. 12/2014 in RP No. 320/2003 in OA No. 1687/1999 in respect of property admeasuring Ac. 1.03 Gts in Sy No. 294/A and 295/A at old Kothagudem Village, in the interest of justice

Counsel for the Petitioner: SRI P. RAMA SHARANA SHARMA

Counsel for Respondent No. 1: SRI G. PRABHAKAR SARMA

Counsel for Respondent No. 10: SRI MUMMANENI SRINIVASA RAO

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION NO.13452 OF 2024

ORDER: (per the Hon'ble Sri Justice J.Sreenivas Rao)

This writ petition is filed for the following relief:

“...to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari to call for records relating to Regular Appeal No.66 of 2023 on the file of Honorable Debts Recovery Appellate Tribunal at Kolkata, arising out of R.A.No.6 of 2016 in C.P.No.12/2014 in R.P.No.320/2003 in OA No.1687/1999, and consequently set aside the same and struck down the auction of land property admeasuring Ac.1-03 guntas in Sy.No.294/A and 295/A at old Kothagudem Village, held on 15.05.2014 in the interest of justice and to pass ...”

2. Heard Sri P.Rama Sharana Sharma, learned counsel for the petitioner and Sri G.Prabhakar Sarma, learned counsel appearing on behalf of respondent No.1 and Sri Mummaneni Srinivasa Rao, learned counsel appearing on behalf of respondent No.10.

3. Brief facts of case:

3.1 Respondent Nos.2 and 5 are Partnership Firms represented by their Managing Partner i.e., respondent No.3. They availed credit loan facilities on 08.02.1995 from State Bank of Hyderabad, presently merged with State Bank of India i.e., respondent No.1. One Sri I.Narayana Rao, who is father of respondent No.3 (Managing Partner of respondent Nos.2 and 5 Firms) created

equitable mortgage by depositing original registered sale deed bearing document No.670 of 1986, dated 22.08.1986 in respect of immovable property i.e. land admeasuring Ac.1-03 guntas in Sy.Nos.294 and 295 situated at Kothagudem Village, Khammam District as a security for repayment of the loan availed by respondent Nos.2 and 5 on 09.02.1995. When respondent Nos.2 and 5 failed to repay the loan, respondent No.1 filed O.A. No.1687 of 1999 (old O.A. No.763 of 1998) before the Debts Recovery Tribunal-I at Hyderabad against respondent Nos.2 to 8 for recovery of dues. The said O.A. was allowed on 27.06.2003 and Recovery Certificate R.P. No.320 of 2003 was issued for recovery of Rs.57,02,901.76 ps. together with interest and costs by sale of the mortgaged immovable property.

3.2 In recovery proceedings *vide* R.P. No.320 of 2003, the subject property was brought for sale and conducted e-auction on 15.05.2014 and respondent No.10 was declared as a successful bidder for an amount of Rs.4,40,000/- and he has paid the said amount and sale certificate was also registered in his favour and Advocate Commissioner handed over the possession on 30.05.2018. In the meanwhile, the petitioner filed claim petition i.e. C.P. No.12 of 2014 before the Debts Recovery Tribunal-I, Hyderabad claiming to be the owner of subject property

contending that he had purchased the same on 08.02.2006 by way of registered sale deed bearing document No.148 of 2006 from Dr. Inturi Sri Babu and his vendor in turn purchased the same through registered sale deed bearing document No.1150 of 2005 dated 25.08.2005 from Sri E.V.S.V. Prasad, who had mortgaged the same as a security in favour of Dr. Inturi Sri Babu *vide* Mortgage Deed document No.374 of 2003 dated 14.07.2003. The Debts Recovery Tribunal, Hyderabad after considering the contentions of the respective parties has dismissed the Claim Petition No.12 of 2014 by its order dated 27.10.2016.

3.3 Aggrieved by the said order, the petitioner filed R.A. No.6 of 2016 on the file of Debts Recovery Tribunal-I, Hyderabad under Section 30(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called for brevity as 'the Act'). The said Debts Recovery Tribunal-I, Hyderabad dismissed the said Appeal by its order dated 08.01.2019 confirming the order of the Recovery Officer dated 27.10.2016.

3.4 Aggrieved by the said order, the petitioner had approached the Debts Recovery Appellate Tribunal at Kolkata *vide* Appeal No.66 of 2023. The Appellate Tribunal also dismissed the Appeal on 15.05.2024 confirming the orders of the Debts Recovery

Tribunal-I, Hyderabad as well as Recovery Officer. Aggrieved by the same, the petitioner filed the present Writ Petition.

Submissions of learned counsel for the petitioner:

4. Learned counsel for the petitioner contended that the petitioner has purchased the property through registered sale deed bearing document No.148 of 2006 dated 08.02.2006 from its original owner by paying valuable sale consideration and he is a *bona fide* purchaser. The alleged creation of equitable mortgage by Sri I.Narayana Rao in favour of respondent No.1 was not reflected in Encumbrance Certificate. He further submits that the boundaries mentioned in the e-Auction sale notice do not match with the sale certificate. The sale certificate should be for the property as mentioned in the auction notification and the entire proceedings are liable to be declared as illegal.

4.1 He further contended that the signature of the mortgager does not tally with the signature on the pattadar passbook. The signature appearing on the letter of mortgage confirmation is in English, whereas the signature on the pattadar passbook is in Telugu. Therefore, the mortgage executed in favour of respondent No.1 itself is doubtful.

4.2 He also contended that the auction conducted by the respondent No.1 is barred by limitation as per Rule 68B, Schedule II of Income Tax Act. Recovery Certificate has been obtained on 27.06.2003, whereas the auction has been conducted on 15.05.2014 i.e., after lapse of 11 years. In support of his contention, he relied upon the judgment of the High Court of Kerala in ***Ratheesh M.N. vs. The Debts Recovery Tribunal, Kerala***¹.

Submissions of learned counsel for respondent No.1:

5. *Per contra*, learned counsel appearing on behalf of respondent No.1 contended that respondent Nos.2 and 5 have availed the credit facility from respondent No.1 and father of respondent No.3 namely Sri I.Narayana Rao created equitable mortgage by depositing the original registered sale deed as a security for due repayment of the loan availed by the respondent Nos.2 and 5. When respondent Nos.2 to 5 committed default in repaying the amount, respondent No.1 filed O.A.No.763 of 1998 against respondent Nos.2 to 8 for recovery of the amount due to them and the same was renumbered as O.A.No.1687 of 1999 on the file of the Debts Recovery Tribunal-I, Hyderabad and the said O.A. was allowed and Recovery Certificate R.P. No.320 of 2003

¹ AIR 2019 KERALA 134

was issued to the Recovery Officer for recovery of a sum of Rs.57,02,901.76 ps. together with future interest. Recovery Officer after following due procedure conducted auction in respect of the subject property on 15.05.2014 and respondent No.10 was declared as highest bidder and he deposited the said amount and the Sale Certificate was issued by the Recovery Officer in favour of respondent No.10 on 01.12.2016. In the meanwhile, the petitioner filed claim petition vide C.P.No.12 of 2014 before Recovery Officer, Debts Recovery Tribunal-I, Hyderabad claiming that he had purchased the property through registered sale deed dated 08.02.2006 from Dr. Inturi Sri Babu and the Recovery Officer after considering the contentions has rightly dismissed the Claim Petition No.12 of 2014 on 27.10.2016. Aggrieved by the same, the petitioner filed appeal before the Debts Recovery Tribunal-I, Hyderabad and the same was dismissed. Aggrieved by the same, he filed further appeal before the Debts Recovery Appellate Tribunal, Kolkata and the same was dismissed on 15.05.2024 by giving cogent reasons.

5.1 He further contended that the petitioner has not questioned the order passed by the Debts Recovery Appellate Tribunal, Kolkata and the issuance of Recovery Certificate in favour of respondent No.1 dated 27.06.2003 is not questioned and the said

order has become final. The petitioner claiming rights basing on the alleged registered sale deed dated 08.02.2006 even prior to execution of the said document, the original owner of the property executed equitable mortgage by depositing the original sale deed in favour of respondent No.1 on 09.02.1995 and the petitioner is not entitled to claim any relief in the present Writ Petition.

5.2 He also contended that Rule 68B, Schedule II of Income Tax Act is not applicable to the present case on hand. In support of his contention, he relied upon the judgment of Division Bench of erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad in **V.Chakrapani vs. State Bank of India, Hyderabad rep. by its Branch Manager and others**², wherein it was held as follows:

“45. In the instant case, no particular rights can be deciphered in favour of the defendant writ petitioner, from the DRT Act or the Second Schedule appended to Income Tax Act. More importantly no consequences for the inaction of the Tax Recovery Officer are provided in these Rules. These Rules talk of the duties assigned to a Tax Recovery Officer. Similarly, no prejudice can be said to have been caused to the interests of the writ petitioner due to delay in accomplishing the sale. On the contrary, the 1st respondent Bank has specifically pleaded that due to shift in jurisdiction of the DRT from Bangalore to Hyderabad and due to the vacancy in the Office of the Recovery Officer, the sale of the immoveable property could not be accomplished for more than three years. Thus, the 1st respondent Bank has no control over the duties or activities of the

² 2010 (4) ALT 484 (D.B.)

Recovery Officer. Further, injustice would be caused otherwise to the 1st respondent Bank. This apart, this special piece of legislation has been ushered into secure recovery of dues to Banks and Financial Institutions. Therefore, the Parliament would not have done anything that might produce the opposite of this objective, as the Banks or Financial Institutions can never be conceived to have any say, much less regulate, the acts of Recovery Officers. Therefore, we hold that the time limit provided in Rule 68B to be merely directory but not mandatory, as can be gathered from various expressions used therein, which may not fit into a tight time frame limit. (For this purpose, we have highlighted those words while extracting Rule 68B)"

Submissions of learned counsel for respondent No.10:

6. Learned counsel for respondent No.10 submits that when respondent Nos.2 and 5 failed to repay the loan availed from respondent No.1, respondent No.1 filed O.A.No.1687 of 1999 before Debts Recovery Tribunal-I at Hyderabad against respondent Nos.2 to 8 for recovery of dues. The said O.A. was allowed on 27.06.2003 and Recovery Certificate R.P. No.320 of 2003 was issued for recovery of Rs.57,02,901.76 along with interest and costs by sale of the mortgaged immovable property. Accordingly, the Recovery Officer, Debts Recovery Tribunal - I, Hyderabad initiated recovery proceedings and conducted public auction of the mortgaged property on 15.05.2014 and respondent No.10 was declared as successful bidder for an amount of Rs.4,40,000/- and the said amount was deposited by him. He

further submitted that respondent No.1 has registered the subject property in the name of respondent No.10 and possession was also delivered to him, new pattadar passbooks were issued and respondent No.10 is also receiving Rythubandhu from the Government all these years without any default.

6.1 In view of the same, the petitioner is having no right, title and possession over the land in question and the petitioner is not *bona fide* purchaser and he is not entitled to obtain equitable relief and the writ petition is liable to be dismissed.

Analysis of the case:

7. Having considered the rival submissions made by the respective parties and upon perusal of the material available on record, it reveals that the petitioner has claimed rights over the property through registered sale deed vide document No.148 of 2006 dated 08.02.2006 said to have been executed by Dr.Inturi Sri Babu. Whereas respondent Nos.2 and 5 which are the partnership firms represented by their Managing Partner-respondent No.3 availed credit facility from the respondent No.1 and one Sri I.Narayana Rao who is father of respondent No.3, Managing Partner of respondent No.5 created equitable mortgage by depositing original registered sale deed bearing No.670 of 1986 dated 22.08.1986 in respect of subject land as a security for due

repayment of the loan facility availed by respondent Nos.2 and 5. When they failed to pay the loan amount, respondent No.1 filed O.A.No.763 of 1998 before the Debts Recovery Tribunal-I at Hyderabad against respondent Nos.2 to 8 and the same was renumbered as O.A. No.1687 of 1999 and the said O.A. was allowed and Recovery Certificate RP No.320 of 2003 was issued to the Recovery Officer for recovery of a sum of Rs.57,02,901.76 ps. together with future interest.

8. Pursuant to the Recovery Certificate, Recovery Officer issued auction sale notice fixing the date for sale of the mortgaged property as 15.05.2014. In the said auction, respondent No.10 was declared as highest bidder for a sum of Rs.4,40,000/-. Thereafter on 01.12.2016 registered sale document No.5793 of 2016 was executed and registered by the Recovery Officer, Debts Recovery Tribunal-I, Hyderabad in favour of the respondent No.10.

9. Aggrieved by the said order, the petitioner filed statutory appeal before the Debts Recovery Tribunal-I, Hyderabad and the Tribunal dismissed said Appeal by its order dated 08.01.2019 confirming the order of the Recovery Officer dated 27.10.2016. Aggrieved by the same, the petitioner had filed further Appeal before the Debts Recovery Appellate Tribunal at Kolkata vide

Appeal No.66 of 2023. The Appellate Tribunal after considering the contentions of the respective parties has dismissed the Appeal on 15.05.2024 specifically holding that the mortgage was created in favour of respondent No.1 much before the sale deed of the petitioner. The death of original mortgager Sri I.Narayana Rao was duly communicated by the respondent No.4 namely Smt.I.Vaidarbhi w/o I.V.S.V. Prasad on 10.12.1997 wherein the fact of mortgage was reaffirmed. The Mortgage Deed documents No.374 of 2003 dated 14.07.2003, registered sale deed document No.148 of 2006 and rectification deed No.901 of 2014, dated 23.04.2014 are all documents which were executed after the creation of mortgage in favour of the Bank. No doubt there are some discrepancies in the boundaries in the sale notice as well as there are some typographical errors in the sale notice published on 24.04.2014, but the petitioner cannot take advantage of those mistakes. However, the boundaries in the Sale Certificate are identical with the boundaries mentioned in the Mortgage Deed. Hence the entire proceedings are liable to be declared as illegal, are not tenable under law.

10. It is also pertinent to mention that the petitioner is a third party and he has no right to challenge the mortgage on the plea of limitation. The principle laid down in **Ratheesh M.N.** (supra) is

not applicable to the facts and circumstances of the present case on hand.

11. It is also pertinent to mention here that Rectification Deed was executed much after publication of the sale notice in order to create legal obligation within objective to challenge the notice. It is also pertinent to mention that the appellate Tribunal in the impugned order specifically held that the schedule property mentioned in the sale deed dated 08.02.2006 in favour of the petitioner tallies with the boundaries of the property in the original sale deed which is deposited with the respondent No.1 by the original mortgager namely Sri I.Narayana Rao.

12. It is already observed supra that the father of respondent No.3 created equitable mortgage by depositing the original registered sale deed dated 22.08.1986 as a security for due repayment of the loan facility availed by respondent Nos.2 and 5 and when they committed default, respondent No.1 initiated the proceedings under the Act. When the mortgage is subsisting with the respondent No.1, the petitioner purchased the property on 08.02.2006 and the document relied by the petitioner is subsequent to mortgage and the petitioner is a third party. Therefore, the petitioner is not entitled to question the mortgage.

13. It is also pertinent to mention here that the petitioner's claim was rejected by the Recovery Officer in Claim Petition No.12 of 2014 on 27.10.2016 and the said Order was confirmed by the Debts Recovery Tribunal-I, Hyderabad in Recovery Appeal No.6 of 2016 on 08.01.2019 and the said order was confirmed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal No.66 of 2023 on 15.05.2024.

14. Learned counsel for the petitioner during the course of arguments, submitted that pursuant to the interim order granted by this Court in W.P.No.1751 of 2019, he deposited an amount of Rs.4,40,000/-. Hence, the order passed by the authorities is liable to be set aside.

15. The contention of the learned counsel for the petitioner that by virtue of depositing the amount pursuant to the interim order granted by this Court, entire proceedings are liable to be set aside, is not tenable under law on the ground that the said Writ Petition was disposed finally on 26.09.2020 directing the petitioner to avail the alternative remedy as available under Section 20 of the Act before the Appellate Tribunal. Basing on the said interim order, the petitioner is not entitled to contend that entire proceedings are liable to be set aside.

16. For the foregoing reasons, this Court does not find any illegality, irregularity or jurisdictional error in the impugned order passed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal No.66 of 2023 dated 15.05.2024 confirming the order passed by the Debts Recovery Tribunal-I, Hyderabad as well as Recovery Officer to exercise the powers conferred under Article 226 of Constitution of India as the scope of judicial review is very limited.

17. Accordingly, the Writ Petition is dismissed. However, the petitioner is granted liberty to file necessary application before respondent No.1 or Debts Recovery Tribunal-I, Hyderabad for refund of the amount which was deposited by him if so aggrieved. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/-A.V.S.PRASAD
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

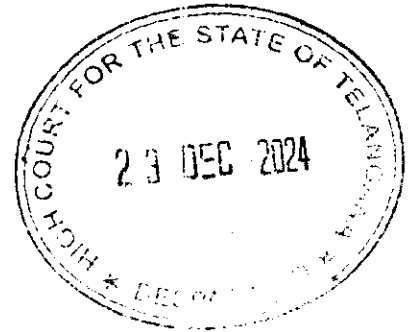
1. One CC to Sri P Rama Sharana Sharma Advocate [OPUC]
2. One CC to Sri G Prabhakar Sarma Advocate [OPUC]
3. One CC to Sri Mummaneni Srinivasa Rao, Advocate(OPUC)
4. Two CD Copies

MBC
GJP



HIGH COURT

DATED: 04/09/2024



ORDER

WP.No.13452 of 2024

DISMISSING THE WRIT PETITION

WITHOUT COSTS

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