



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU
THE HONOURABLE SRI JUSTICE V SRINIVAS
WRIT PETITION NO: 40784 OF 2018

Between:

1. Sri.Mandava Srinivasu S/o Radha Krishna Murthy, aged 50 years,
Resident of 26-34-42, 8th Lane, A.T.Agraharam, Guntur, Andhra
Pradesh.

...PETITIONER(S)

AND:

1. State Bank of India Represented by its Authorized Officer, Regional
Office, Door.No.5-87-92,
2nd Floor, Branch, Laxmipuram Main Road, Guntur, Andhra Pradesh.
2. The Chief Manager State Bank of India, 8th lane Branch, Arundalpet,
Guntur, Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): CHALLA GUNARANJAN

Counsel for the Respondents: C SUBODH

The Court made the following: ORDER



*** HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ WRIT PETITION No.40784 of 2018

% 14th July, 2023

Sri Mandava Srinvasu

... Petitioner..

AND

\$ State Bank of India and 2 others.

... Respondents.

! Counsel for the Petitioner

: Sri Challa Gunaranjan

^ Counsel for the respondents

: Sri C. Subodh

< Gist:

> Head Note:

? Cases referred:

1. 2018 (2) ALT 640
2. (2018) 5 SCC 543
3. 2016 (4) JCR 445
4. (2022) 9 SCC 341
5. (2014) 16 SCC 760
6. (1992) 1 SCC 508



HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

and

HON'BLE SRI JUSTICE V. SRINIVAS

WRIT PETITION No.40784 of 2018

ORDER: *(per D.V.S.S.Somayajulu, J)*

This Writ Petition is filed for the following relief, as per the amendment permitted in I.A.No.1 of 2019 by order dated 25.07.2019:

“....to pass an order or orders or direction more particularly one in the nature of a writ of Mandamus declaring the action of respondent bank in not refunding the amount of Rs.98,07,650/- along with interest of 24% per annum deposited by the petitioner pursuant to the e-auction notices dated 12.07.2014, 19.07.2014 and 20.08.2014 as being arbitrary, illegal and in violation of the principles of natural justice and Article 14 and Article 21 of the Constitution of India and consequently direct the respondent Bank to refund the amount of Rs.98,07,650/- along with interest of 24% per annum and pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case and interest of justice.”

2) The writ petitioner is seeking refund of the amounts deposited by him with the respondent bank. Respondent bank advertised for sale of certain immovable and movable



properties. As the sale did not fructify for various reasons the petitioner is seeking refund of the amounts with interest.

3) This Court has heard Sri Challa Gunaranjan, learned counsel for the petitioner and Sri C. Subodh, learned counsel appearing for the respondents.

4) Learned counsel for the petitioner submits that e-auction was conducted for Item No.1, which is a house property bearing Door No.21/31, situated at Balaji Nagar, Kukatpally, Hyderabad; for Item No.2, which is a rice mill situated in Nadimpalem village, Prattipadu Mandal, Guntur District. For Item No.3 movable property (four pickup vans and three delivery vans) a separate auction notice was issued.

5) Learned counsel points out that as far as house property bearing Plot No.31 (Old D.No.21/31) is concerned a sum of Rs.57,88,900/- was paid by the writ petitioner. As the sale did not fructify this amount was returned only in January, 2019. Therefore, the writ petitioner seeks interest on this amount which is refunded. For Item No.2 rice mill learned counsel submits that e-auction notice was published on 19.07.2014 and the auction as held on 21.08.2014. Petitioner paid a sum of Rs.39,10,000/- on 21.08.2014. The respondent



did not confirm the sale in favour of the petitioner as mandated in the rules and the e-auction terms. Therefore, further action could not be taken for payment of the balance. This sale also did not fructify and the petitioner is seeking refund of the amount with interest. As far as the movable properties are concerned a separate auction notice was published on 20.08.2014 for sale of the vans. The petitioner paid a sum of Rs.1,08,750/- but Sale certificate was not issued to the writ petitioner. Therefore, he is seeking refund of this amount also. It is also pointed out that the original borrower had resorted to litigation and also certain transfers with regard to item No.1 viz., the house Plot No.31. The Debt Recovery Tribunal, Hyderabad, has also issued direction to defer the issuance of the sale certificate. The borrower also gifted the property to his son, who in turn mortgaged the same to another party. This also complicated the issue according to the learned counsel thereby driving the petitioner to Court by filing this writ petition seeking refund of the amount with interest etc.

6) Respondent bank filed its counter and the learned counsel argued in line with what is stated in his counter. It is



agreed that pursuant to the orders of this court money was refunded in so far as item No.1 is concerned. As far as Item No.2-rice mill is concerned it is argued that since the bidder-writ petitioner failed to pay the balance sale consideration as warranted under the rules, the amount deposited was forfeited. Even with regard to movables viz., the vans, it is contended that despite the sale confirmation being communicated the writ petitioner failed to pay the balance amount. Therefore, the amount paid by the writ petitioner was forfeited. The bank firmly contended that it is the petitioner, who is at fault and hence it is argued that the petitioner is not entitled to any relief whatsoever.

7) Learned counsel for the petitioner also relied upon Rule 9 of the Security Interest (Enforcement) Rules, 2002 and the following cases in support of his contentions:

- i) ***Mr.Mandava Krishna Chaitanya v UCO Bank, Asset Management Branch***¹;
- ii) ***Rakesh Birani (Dead) through LRs v Prem Narain Sehgal and Another***²; and
- iii) ***Kumar Rohit v Allahabad Bank and 2 others***³
(Judgment of Jharkhand High Court)

¹ 2018 (2) ALT 640

² (2018) 5 SCC 543

³ 2016 (4) JCR 445

**COURT:**

8) Item No.1 is a house property bearing Plot No.31, Old Door No.21/31. It is clear that the petitioner was the successful bidder and the sale was confirmed in his favour by a letter dated 14.08.2014. The petitioner also paid a sum of Rs.57,88,900/-. It transpires that the original borrower filed S.A.No.591 of 2014 before the Debt Recovery Tribunal, Hyderabad, which gave an interim order in his favour. It also directed the bank not to confirm the sale. The borrower had also gifted the property to his son during the pendency of the litigation. The son in turn mortgaged the property to another party. All of these led to complications in the matter and delayed the finalization of the sale. Even the counter affidavit filed by the Bank states these facts only. It is also admitted that pursuant to the orders passed by this Court the amount was refunded to the writ petitioner in January, 2019. There is only a claim for interest for this item. The claim for interest is dealt with in subsequent paragraphs.

9) As far as Item No.2 is concerned it is for the sale of rice mill measuring Ac.1-45 cents in all. The auction was held on 21.08.2014. The petitioner was a bidder therein. His



contention is that the bank did not confirm that he was the successful bidder as required under the rules and the conditions of the auction. Rule 9 of the Rules, 2002 has been considered by the Hon'ble Supreme Court of India in ***Rakesh Birani case (2 supra)***. In paragraphs 8 and 9 it was held that the deposit of the balance amount can only be made after the confirmation by the secured creditor. Rule 9 (2) of the Rules, 2002 clearly states that the sale shall be confirmed in favour of the purchasers, who has offered highest sale price, and shall be subject to confirmation by the secured creditor. Thus there are two confirmations which are necessary under Rule 9 (2).

10) Under Rule 9 (4) of the Rules, 2002 the balance amount shall be paid by the purchaser on or before 15th day of the confirmation of sale or such extended period as agreed between the purchaser and the secured creditor. Both these rules are crystal clear and make it evident that the bank / secured creditor should in fact confirm the sale in favour of the successful bidder. Even the terms of the auction very clearly state in Clause 8 that the confirmation of the successful bidder would be announced and information/ confirmation would be communicated by the secured creditor through electronic



medium. Therefore, a reading of the rules 9(2) and later 9(4) and the terms of the auction make it clear that the secured creditor's confirmation had to be expressly given to the borrower. The petitioner is before this Court stating that no such confirmation was given and that consequently the 15 day period for deposit of the balance sale consideration does not commence. As a corollary he states that there is no default. It is also interesting to note that as far as the house property bearing Plot No.31 is concerned a sale confirmation was expressly issued on the letterhead of the State Bank of Hyderabad to the petitioner. He was directed to pay the remaining bid amount within 15 days. Such a confirmation is not produced, filed or even referred to in the counter affidavit filed with regard to Item No.2-the mill property. Therefore, in line with the judgment of the Hon'ble Supreme Court of India, this Court has to agree that no default can be attributed to the writ petitioner in this aspect. Time does not begin to run unless express confirmation is given to the petitioner and so the forfeiture of the amount deposited for the alleged default is consequently bad in law.



11) As far as movable property is concerned a separate notification dated 20.08.2014 has been published. This auction is an on “as is where is” basis. The conditions of auction also prescribed in Clause 2 that “successful bidder must pay at least 25% immediately and the balance within 15 days”. In this case also the petitioner is before this Court stating that he has not been issued any notice whatsoever stating that he is the successful bidder. Default can be attributed to the writ petitioner only after he was put on notice that he is the successful bidder and he was called upon to deposit the balance amount. The record is conspicuously silent on this aspect. Even during the hearing no document is brought to this Court’s notice to show that confirmation was given. Therefore, this Court again opines that the respondent cannot forfeit the amount deposited.

12) This Court is, therefore, is of the firm opinion that as far as Item No.2 – rice mill etc., and the movables (Vans) are concerned no breach or default can be attributed to the writ petitioner. The forfeiture of the amounts on the ground that the petitioner committed a default is not correct.



13) After the matter was reserved for the orders and the judgment was about to be pronounced the counsel for the respondent-bank brought to the notice of this Court that an additional counter has been filed and certain facts have to be brought to this Court's notice.

14) Despite the vehement objection of the petitioner's counsel an opportunity was given to the learned counsel to argue the matter.

15) It is his contention, based on the additional counter affidavit that is filed, that the tender process was closed on the screen itself and name of the petitioner was announced as successful bidder during the auction itself. It is stated that the communication through the website after closing of the e-bidding is sufficient and no separate communication is to be sent. It is also pleaded that the writ petitioner is aware of the fact that he is the successful bidder as the same was announced in the web site itself.

16) This additional ground as stated in paragraphs 8 and 9 is highlighted while relying upon condition 8 of the auction notice.



17) Learned counsel for the writ petitioner points out that after the arguments are over an altogether new plea is raised, which was not stated earlier. He points out that during the course of the correspondence or earlier counter this issue is not raised. He states there is no proof for the same also. He strongly opposed the permission granted by this court to the counsel for the respondent to argue.

18) This Court notices that on 09.05.2023 an order was passed after the arguments were concluded for clarification on limited point – Whether the formal communication by e-mail or otherwise was given to the bidder / writ petitioner that he was the successful bidder?

19) Instead of answering this limited question, additional counter affidavit has been filed with the contention that no separate communication would be addressed and that the communication would be displayed on the screen itself. As rightly pointed out by the counsel for the petitioner, this plea was not taken earlier during the correspondence or in the earlier counter affidavit filed. A reading of the publication in Telugu makes it clear that after the secured creditor /



authorized officer confirms the same సమాచారం (Communication)

will be issued. In Telugu it states as follows:

“సమాచారం జారీ చేయబడును”

20) This is also in line with Rule 9 (2) which states that the sale shall be “confirmed” in favour of the purchaser who has offered the highest sale price in his bid/tender/quotation or offered to the authorized officer and shall be subject to confirmation by the secured creditor.

21) If the contention of the Bank is that no separate confirmation will be issued is to be accepted the same should have been spelt out with clarity in the terms and conditions of the auction itself. The auction terms should have clearly stated that the person who gives the highest or best bid will be declared successful on the screen itself and no separate communication would be sent. It is also pertinent to note that the respondent Bank did not file any proof that this was in fact displayed like a screen shot etc. They did not raise this plea earlier. Therefore, the additional ground urged by the respondent bank is also rejected.

**INTEREST:**

22) As far as interest is concerned it is clear that there is no provision either in the Act, in the Rules or in the auction notice for payment of interest. The petitioner is relying upon (a) the notice dated 23.11.2015 claiming refund of Rs.57,88,900/-; (b) the notice dated 17.04.2018 claiming refund of Rs.39,10,000/- and (c) the notice dated 17.04.2018 claiming refund of Rs.1,08,250/-. Subsequent notices also issued by the writ petitioner did not evoke any response. The law is also clear that if there is no agreement etc., between the parties the Interest Act, 1978 or a similar statute providing for payment of interest can be pressed into service to claim interest. In the case on hand the petitioner has issued notices demanding interest. As mentioned earlier no fault can be attributed to the writ petitioner in this case. The Division Bench of the combined High Court reported in ***Mandava Krishna Chaitanya case (1 supra)*** directed the refund of amount along with interest at the rate of 18% p.a. The power of this Court and to grant interest while directing refund of the amount has also been upheld in many cases including the judgment in ***Union of India and Others v Willowood***



Chemicals Private Limited and Another⁴. Both on grounds of equity, as there is no provision in the statute etc., and as a notice was issued, this Court is of the opinion that the petitioner is entitled to refund of the amount payable along with interest. This Court also draws support from **State of U.P. v. Jaswant Sugar Mills Ltd.**,⁵.

23) However, interest rates keep fluctuating, they are not static and they depend on market condition. This Court cannot directly award interest at 24% as prayed for. No clear proof is filed for this rate of interest. The respondent Bank did not expressly deny or contest this claim for interest. A person deprived of the use of his money is entitled to compensation / interest / damages by whatever name it is called (**Irrigation Deptt., Govt. of Orissa v. G.C. Roy**)⁶. The ratio of this case is applicable to this Writ also. At the same time this Court notices that no proof is filed about the contemporaneous interest rates. This duty has to be discharged by a party claiming interest. However, when such proof is not forthcoming and the Court finds that the petitioner is not

⁴ (2022) 9 SCC 341

⁵ (2014) 16 SCC 760

⁶ (1992) 1 scc 508



guilty of any default etc., rules of justices / equity will allow the Court to grant reasonable rate of interest. Considering the fact that this is a public sale of commercial property by a Bank which is in the business of lending money award of interest at the rate of 12% p.a. is deemed to be reasonable in the circumstances.

24) Hence, the writ petition is allowed (a) directing the payment of interest at the rate of 12% p.a. on Rs.57,88,900/- from 01.09.2014 till 01.02.2019; (b) directing the respondents to refund the amount of Rs.39,10,000/- with interest at the rate of 12% from 21.08.2014 till the date of realization; and (c) a further direction to the respondent is given to refund the sum of Rs.1,08,750/- with interest at the rate of 12% p.a. from 28.08.2014 till the date of realization. There shall be no order as to costs.

25) Consequently, pending Miscellaneous Applications, if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

V. SRINIVAS, J

Date:14.07.2023.
Note: LR copy be marked.
B/o
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