

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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W.P.Nos.18557 of 2020, 21744 and 24280 of 2019

W.P.No.18557 of 2020

Between:

**Cherukuwada Venkata Bangara Raju,
S/o Venkatararasimha Raju, aged about 58 years,
Occ: Business, R/o D.No.4-12-31/A,
Subbaraopet, Tadepalligudem, West Godavari District,
Andhra Pradesh.**

..Petitioner

Vs.

- 1. The Debts Recovery Tribunal-I,
Rep. by its Registrar, Office of the DRT-I,
3rd floor, Triveni Complex, Abids Road,
Hyderabad and another**

...Respondents

JUDGMENT PRONOUNCED ON: 02-12-2021

THE HON'BLE SRI JUSTICE UJJAL BHUYAN

AND

THE HONOURABLE DR JUSTICE C.SUMALATHA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

UJJAL BHUYAN, J

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AND
THE HONOURABLE DR JUSTICE C.SUMALATHA**

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Respondents

! Counsel for Petitioner in WP.No.18557/2020: Mr. M. Koteswara Rao

^ Counsel for the respondents in WP.No.18557/2020: Mr.N.V.Subba Raju

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> HEAD NOTE:

? Cases referred

NIL

Honourable Sri Justice Ujjal Bhuyan

and

Honourable Dr. Justice Chillakur Sumalatha

W.P.Nos.18557 of 2020, 21744 and 24280 of 2019

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

Heard learned counsel for the parties.

2. This order will dispose of W.P.Nos.21744 and 24280 of 2019 as well as W.P.No.18557 of 2020.

3. At the outset, we may briefly narrate the facts relevant for each of the Writ Petitions.

W.P.No.21744 of 2019

4. W.P.No.21744 of 2019 has been filed by the auction purchaser- Bharat Kumar Patel. In this Writ Petition, petitioner has prayed for a direction to respondent No.1/UCO Bank to issue sale certificate in respect of the property purchased by him in the E-auction carried out on 21.10.2013.

5. According to the petitioner, respondent No.1/UCO Bank had issued auction sale notice dated 13.09.2013, in the newspapers scheduling the auction on 21.10.2013. Pursuant thereto, he participated in the auction and was the successful bidder. Consequently, he purchased the schedule property admeasuring Acs.7.00 guntas in Survey No.322 situated at Dundigal Village, Qutbullapur Mandal, Ranga Reddy District, for an amount of

Rs.87,02,000.00, which was above the reserve price of Rs.86,27,000.00. He had paid the entire amount of Rs.87,02,000.00, by 29.10.2013, in the following manner:

Sl.No.	Date	Amount of Rs.
1.	18.10.2013	8,62,700
2.	21.10.2013	13,50,000
3.	25.10.2013	23,00,000
4.	29.10.2013	41,89,300
	Total	87,02,000

6. Thus, he had paid the entire sale price within fifteen days from the date of sale. Thereafter, respondent No.1/UCO Bank handed over physical possession of the purchased property to the petitioner. But, for one reason or the other, the sale certificate was not issued.

7. On enquiry, petitioner came to know that the borrower *i.e.*, respondent No.2- Cherukuwada Venkata Bangara Raju had filed an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') before the Debts Recovery Tribunal-I, Hyderabad (for short 'the Tribunal'), which was registered as S.A.No.578 of 2016.

8. The said Securitisation Application was dismissed by the Tribunal on 26.04.2019. Though petitioner had filed an interim application in S.A.No.578 of 2016, seeking a direction for issuance

of sale certificate, the same could not be pursued as the Securitisation Application was dismissed.

9. Petitioner had represented before respondent No.1/UCO Bank on 18.12.2018 and 15.07.2019 for issuance of sale certificate, but there has been no response. It is under such circumstances, that the present Writ Petition came to be filed.

W.P.No.24280 of 2019

10. W.P.No.24280 of 2019 has been filed by the borrower, for quashing of orders dated 29.10.2019 and 26.04.2019, passed by the Tribunal, for restoration of S.A.No.578 of 2016 to file and for adjudication of the same on merit. From the pleaded facts, it is seen that petitioner *i.e.*, Cherukuwada Venkata Bangara Raju is the managing partner of the firm- M/s.Jatropha Bio-Tech, which is engaged in agro based business. For the purpose of facilitating the business, petitioner had availed term loan of Rs.25 lakhs from UCO Bank. It is stated that for securing the loan, petitioner had mortgaged the schedule property, which is an agricultural property.

11. For various reasons, petitioner could not repay the loan amount in its entirety. As a result, UCO Bank classified the loan account of the petitioner as a Non-Performing Asset (NPA). Not only that, UCO Bank, in a hurried manner, filed O.A.No.204 of 2010, before the Tribunal under the Recovery of Debts due to

Banks and Financial Institutions Act, 1993 (for short 'the RDB Act').

12. Notwithstanding filing of OA.No.204 of 2010, UCO Bank initiated proceedings under the SARFAESI Act as well and had issued notice under Section 13(2) thereof. Thereafter, UCO Bank took over possession of the schedule property and put the same to auction sale.

13. Petitioner had filed SA.No.209 of 2013 before the Tribunal under Section 17 of the SARFAESI Act challenging the action taken by the UCO Bank under the SARFAESI Act. An Interlocutory Application being IA.No.1502 of 2013 was filed seeking stay of all further proceedings. It is stated that Tribunal had granted a conditional stay subject to deposit of Rs.6 lakhs by the petitioner with UCO Bank.

14. From the pleadings, it is not very clear as to whether petitioner had paid the aforesaid amount of Rs.6 lakhs. However, it is alleged that on being induced by UCO Bank officials, petitioner withdrew S.A.No.209 of 2013.

15. However, the auction sale notice dated 13.09.2013 was issued by the UCO Bank for auction sale of the schedule property on 21.10.2013. At this stage, petitioner filed S.A.No.578 of 2016 before the Tribunal under Section 17 of the SARFAESI Act. As

petitioner's counsel was in another Court when the Securitisation Application was called upon for hearing, Tribunal dismissed the same on 26.04.2019 for default. Petitioner filed a Miscellaneous Application being M.A.No.71 of 2019 for setting aside the above order dated 26.04.2019. However, by order dated 29.10.2019, the Miscellaneous Application was dismissed.

16. Aggrieved thereby, the present Writ Petition has been filed seeking the reliefs as indicated above.

W.P.No.18557 of 2020

17. This brings us to the last of the Writ Petitions being W.P.No.18557 of 2020 filed by the borrower- Cherukuvada Venkata Bangara Raju. In this Writ Petition, petitioner seeks a declaration that order dated 29.09.2020, passed by the Tribunal in M.A.No.15 of 2020 in O.A.No.204 of 2010 is illegal, improper and void. Additionally, prayer has been made for a direction to UCO Bank to accept the demand drafts of the petitioner totaling Rs.87,00,000.00.

18. In addition to what has been stated in W.P.No.24280 of 2019, petitioner in this Writ Petition has stated that when O.A.No.204 of 2010 came up for hearing, petitioner offered to repay the entire loan amount. This was accepted by the Tribunal and accordingly, O.A.No.204 of 2010 was allowed by the order

dated 06.01.2020, directing the petitioner to pay the claimed amount of Rs.36,52,459.00 with future simple interest @ 18% p.a., from the date of filing of the OA till the date of full payment.

19. On the strength of the order dated 06.01.2020, petitioner had approached the UCO Bank authorities. According to the petitioner, the total outstanding dues were calculated at Rs.87,00,000.00 and he requested the UCO Bank authorities to accept nine demand drafts for the aforesaid amount. When the UCO Bank authorities refused to accept the demand drafts, petitioner filed M.A.No.15 of 2020 before the Tribunal for a direction to the UCO Bank to furnish details of outstanding dues and thereafter, to receive the decretal amount. By order dated 29.09.2020, Tribunal disposed of M.A.No.15 of 2020, directing UCO Bank to open an 'interest bearing no-lien account' in the name of the petitioner, in which account, petitioner was to deposit the nine demand drafts. However, the UCO Bank authorities refused to open such an account and therefore, petitioner could not deposit the nine demand drafts. It is in the above factual background, that the instant Writ Petition came to be filed by the petitioner.

20. Respondent/UCO Bank has filed counter-affidavit in W.P.No.21744 of 2019, filed by the auction purchaser- Bharat

Kumar Patel as well as in W.P.No.24280 of 2019, filed by the borrower- Cherukuwada Venkata Bangara Raju. In both the counter-affidavits, in addition to the preliminary objection raised as regards availability of alternative remedy under the SARFAESI Act, and non availing of the same by the petitioners, it is additionally stated that M/s.Jatropha Bio-Tech had approached the UCO Bank in September, 2004, for a loan of Rs.25 lakhs. Such loan was sanctioned and disbursed. As a security for the loan availed of, the borrower created mortgage by deposit of title deeds of the schedule property. For failure to repay the loan dues, UCO Bank classified the loan account as NPA. On 06.05.2009, demand notice was issued by UCO Bank under the SARFAESI Act, but the borrower failed to discharge the liability. Thereafter, UCO Bank took over possession of the schedule property and issued possession notice dated 25.03.2013, with regard to the schedule property, which was also published in two daily newspapers *viz.*, Namaste Telangana and New Indian Express, on 27.03.2013. By following the due procedure, the schedule property was put to public auction conducted on 21.10.2013. Sri Bharat Kumar Patel was the successful bidder at the bid amount of Rs.87,02,000.00. He paid the entire auction money whereafter, sale certificate was issued to him by the Authorized Officer of UCO Bank on 13.09.2013, which

was published in two newspapers on 14.09.2013. It was also sent to the borrower. It is contended that the property was sold on “as is where is” basis. Once sale certificate was issued, auction purchaser became the owner of the property as registration of such sale certificate is not mandatory. Therefore, Sri Bharat Kumar Patel became the absolute owner of the schedule property and no further steps are required to be taken. However, if the auction purchaser wants to get the sale certificate registered, UCO Bank would extend all possible help and co-operation before the registering authority.

21. Detailed submissions have been made by learned counsel for the parties, which have been duly considered.

22. From the pleadings and materials on record, the following undisputed facts have emerged:

1. M/s. Jatropha Bio tech, of which Cherukuwada Venkata Bangara Raju is the managing partner, had availed loan to the extent of Rs.25 lakhs from UCO Bank. As a security, the borrower had mortgaged the secured asset, which is contended to be agricultural property.
2. For failure to repay the loan amount, the loan account was classified as NPA.
3. Thereafter, UCO Bank issued demand notice under the SARFAESI Act on 06.05.2009. Despite receipt of such notice, there was no compliance.
4. UCO Bank took over possession of the schedule property and issued possession notice on 25.03.2013,

which was published in the newspapers on 27.03.2013.

5. Sale notice was issued on 13.09.2013, whereby and whereunder, the schedule property was put to E-auction on 21.10.2013. In the auction, at his bid amount of Rs.87,02,000.00, Bharat Kumar Patel was the successful bidder. He had paid the entire amount of Rs.87,02,000.00 whereafter, physical possession of the schedule property was handed over to him.

6. In the meanwhile, UCO Bank had also moved the Tribunal by filing O.A. No.204 of 2010. During the pendency of OA.No.204 of 2010, the aforesaid action under the SARFAESI Act was undertaken, following which, the schedule property was auction sold.

23. It is indeed very surprising that when OA.No.204 of 2010 came up for hearing before the Tribunal on 06.01.2020, neither the UCO Bank nor the borrower had informed the Tribunal about the aforesaid developments, which had taken place in the meanwhile, which had, in fact, rendered OA.No.204 of 2010 infructuous. Order dated 06.01.2020 passed by the Tribunal in O.A.No.204 of 2010 discloses that counsel for both the sides were present and they were heard. Thus, withholding of the above vital information both by the borrower as well as by the UCO Bank was highly improper inasmuch as, without being informed of the intervening developments, Tribunal unknowingly disposed of OA.No.204 of 2010 on 06.01.2020 in the following manner:

“Since the Defendants have admitted availing of credit facilities and have expressed their willingness to clear the dues and redeem the mortgage, the present OA is liable to be allowed as per Sec.19(5B) of the RDB Act, 1993. Further, since the Defendants, while expressing their willingness to clear the outstanding dues, have contended that the rate of interest @ 18% p.a., with quarterly rests, as claimed by the Applicant Bank is exorbitant, I am of the considered view that it would be just and proper to award future interest @ 18% p.a., simple from the date of filing of the OA till the date of realization.

Accordingly, the present OA is allowed u/s. 19(5B) of the RDB Act, 1993, directing the Defendants No.1 to 3 to pay the OA claim of Rs.36,52,459/- with future interest @ 18% p.a., simple from the date of filing of the OA till date of full payment within 30 days from the date of this order. The Applicant Bank is entitled to the costs of the OA, which shall be paid by the Defendants. This Tribunal cannot pass any directions to the Applicant Bank for return of title deeds to the Defendants and the Defendants have to pursue their remedy at appropriate forum. In the event of failure of payment of the OA claim with future interest and costs by the Defendants within 30 days from the date of this order, the Applicant Bank is at liberty to approach this Tribunal for issuance of Recovery Certificate against the Defendants.”

24. This order of the Tribunal was wholly unnecessary and unwarranted, in view of what had happened in the interregnum. When the UCO Bank refused to accept payment by the borrower, the borrower filed M.A.No.15 of 2020 before the Tribunal, to which UCO Bank filed counter-affidavit. This time, in its counter-

affidavit, UCO Bank, however, stated about the auction sale notice dated 13.09.2013, about the auction sale on 21.10.2013 and about the fact that an amount of Rs.87,02,000.00 was realized from the successful bidder whereafter, possession of the schedule property was handed over to him.

25. Notwithstanding the same, Tribunal passed order dated 29.09.2020, in M.A.No.15 of 2020, directing the UCO Bank in the following manner:

“It is a matter of record that, the Petitioner-Defendant has filed W.P.No.24280/2019 before the Hon’ble High Court for the State of Telangana challenging the order dt.26.04.2019 passed by this Tribunal in S.A.No.578 /2016 and the Hon’ble High Court had granted stay on 06.11.2019. Further, the Auction Purchaser has also filed WP.No.21744/2019 before the Hon’ble High Court for the State of Telangana against the Respondent-Bank and the Petitioner-borrower. Both the said writ petitions are pending before the Hon’ble High Court and there is a possibility of setting aside the auction sale of the mortgaged properties conducted by the Respondent-Applicant Bank would have to refund the auction amount to the auction purchaser and the Respondent-Application Bank has to proceed afresh for the recovery of the dues from the Petitioners-Defendants. Since the Petitioners-Defendants are still showing their willingness to deposit the amount, and also keeping in view the fact that the loan account of the Petitioners-Defendants is currently closed, it would be just and proper to direct the Respondent-Applicant Bank to open an ‘interest bearing no lien account’, wherein the Petitioners-Defendants can deposit the 9 DDs produced before this Tribunal (by validating the same). In the event the sale of the

mortgaged properties held on 26.04.2019 by the Respondent-Applicant Bank is up-held by the Hon'ble High Court, the Petitioners-Defendants shall be entitled to the amount deposited by them in the 'interest bearing no lien account' with accrued interest and if the sale of the mortgaged properties is set-aside, the Auction Purchaser would be entitled to the auction amount deposited by him and the Respondent-Applicant Bank can appropriate the outstanding dues in the loan account of the Petitioners-Defendants from out of the amount deposited by them into the 'interest bearing no-lien account'.

26. The above order passed by the Tribunal, in our considered opinion, was wholly unnecessary and unwarranted inasmuch as in view of the intervening developments. That apart, it is based entirely on surmises and conjectures. It needs no reiteration that the right of the borrower to redeem the mortgaged property exists till the time of auction sale. Before auction sale takes place, it is open to the borrower to repay the outstanding dues and redeem the mortgaged property. However, once auction sale takes place and the schedule property is purchased, such right of the borrower stands extinguished. Auction sale had taken place way back in the year 2013. Seven years thereafter, in 2020, there was no necessity for the Tribunal to have passed the order dated 06.01.2020, in the manner indicated above, which was further compounded by the subsequent order dated 29.09.2020, as extracted above. It would be

wholly unjust to act the clock back now. As the Supreme Court had said, of course in a different context, a scrambled egg cannot be unscrambled.

27. Though it was contended that the schedule properties are agricultural land, which could not have been auction sold by the Tribunal under the SARFAESI Act, there is nothing on record to show the nature and character of the schedule property as agricultural land. That apart, it is the borrower, who had mortgaged the schedule property to avail loan from the UCO Bank. Having availed the loan on the strength of such secured asset, it is not open for the borrower to contend that such secured asset should not be put to auction sale for recovery of the defaulting dues.

28. In view of what we have discussed above, it would be wholly unnecessary for us to direct reopening of S.A.No.578 of 2016, filed by the borrower before the Tribunal. Thus, on an overall consideration of all aspects of the matter, we are of the view that no case for interference is made out in the Writ Petitions filed by the borrower. In so far the grievance of the auction purchaser is concerned, it is the stand of the UCO Bank that already sale certificate had been issued. However, copy of such a certificate has not been placed on record. At this stage, we may advert to Rule

9(6) of the Security interest (Enforcement Rules), 2002, which reads as under:

“On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.”

29. That being the position, we direct that if the certificate of sale has not yet been issued to the auction purchaser, the same shall be issued in terms of the aforesaid rule, within a period of six weeks from the date of receipt of a certified copy of this order.

30. Consequently, WP.No.21744 of 2019 is disposed of in the above manner whereas W.P.Nos.24280 of 2019 and 18557 of 2020 are dismissed. Related interim applications stand dismissed.

31. No costs.

Ujjal Bhuyan , J

Dr. C.Sumalatha, J

Date: 02.12.2021.

Note;
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