

**IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD**  
**\* \* \* \***

**W.P.No.32216 2021**

**Between:**

**M/s. YKM Entertainment & Hotels Private Limited  
And six others.**

**Petitioners**

**VERSUS**

State Bank of India,  
Rep. by its Deputy General Manager  
And another.

**Respondents**

**JUDGMENT PRONOUNCED ON: 17.01.2022**

**HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY**

- 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**

**\* HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY**

**+ W.P.No.32216 2021**

**% 17.01.2022**

**# Between:**

**M/s. YKM Entertainment & Hotels Private Limited  
And six others.**

**Petitioners**

**VERSUS**

State Bank of India,  
Rep. by its Deputy General Manager  
And another.

**Respondents**

**! Counsel for Petitioners                      Sri Mamidi Avinash Reddy**

**^ Counsel for the respondents            : Sri A. Krishnam Raju,**

**<GIST:**

**> HEAD NOTE:**

**? Cases referred**

**<sup>1</sup> (2007) 8 SCC 449**

**<sup>2</sup> (2010) 2 SCC 114**

**<sup>3</sup> AIR 1963 SC 1558**

**<sup>4</sup> (2010) 14 SCC 38**

**<sup>5</sup> (2013) 11 SCC 531**

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY**

**W.P.No.32216 OF 2021**

**ORDER:**

(Per Hon'ble Sri Justice Ujjal Bhuyan)

Seven petitioners have joined together and have instituted the present common proceeding under Article 226 of the Constitution of India assailing the legality and validity of the measures taken by the respondents under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly, 'the SARFAESI Act' hereinafter) including issuance of e-auction sale notice dated 27.10.2021 fixing auction sale of the schedule property on 08.12.2021.

2 We have heard Mr.Mamidi Avinash Reddy, learned counsel for the petitioners and Mr.A.Krishnam Raju, learned counsel for the respondents.

3 Petitioner No.1 is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the hospitality business in what was then the composite State of Andhra Pradesh. In this regard, petitioner No.1 proposed to construct a five star hotel at Tirupati by entering into an agreement with the Holiday Inn Group on 30.12.2008.

4 Petitioner No.1 entered into a term loan agreement dated 30.08.2011 with a consortium of banks, the lead bank being

the then State Bank of Hyderabad. As per the term loan agreement, consortium of banks had sanctioned and disbursed loan of Rs.136 crores to petitioner No.1. According to the petitioners there was considerable delay in sanctioning the loan and its disbursement; in fact there was total delay of about 21 months.

5 While executing the project of constructing five star hotel, promoters of petitioner No.1 required more funding. When this was brought to the notice of the consortium of banks, a meeting of joint lenders forum was held on 18.08.2016 and a corrective action plan was formulated to provide additional term loan of Rs.34.57 crores to petitioner No.1.

6 Allegation of the petitioners is that though the lead bank i.e. State Bank of Hyderabad had released the sanction order for additional term loan on 18.11.2016, the same was not executed. However, petitioner No.1 made payment of Rs.10.27 crores anticipating execution of sanction order.

7 On 07.07.2017, the loan account of petitioner No.1 was migrated to the Stressed Assets Management branch of State Bank of India for recovery of the dues. Petitioner No.1 was advised by the respondents to go for One Time Settlement (OTS) of the dues. Though petitioner No.1 submitted proposal

for settlement at Rs.80 crores, the same was not accepted by the respondents on the ground that the quantum was too low.

8 According to the petitioners, respondents thereafter issued demand notice under Section 13 (2) of the SARFAESI Act. In response, petitioner No.1 submitted another proposal for OTS at Rs.105 crores. Without responding to the same, respondents issued possession notice under Section 13 (4) of the SARFAESI Act on 30.11.2018. Thereafter, sale notice dated 10.01.2019 was issued for sale of the mortgaged property (secured asset) in respect of which the reserve price was fixed at Rs.83.6 crores.

9 Against such action of the respondents, petitioner No.1 filed securitization application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal-II, Hyderabad (Tribunal) which was registered as S.A.No.56 of 2019. However, the auction, in terms of the sale notice dated 10.01.2019, did not materialize as no bidders participated in the auction.

10 Petitioner No.1 and respondents entered into a joint memorandum of compromise dated 30.08.2019 as per which petitioner No.1 agreed to pay a total amount of Rs.112 crores in four installments towards full and final settlement of its outstanding liability. In view of such settlement, Original Application filed by the respondents before the Tribunal, being

O.A.No.787 of 2018, was withdrawn, vide order dated 19.09.2019, passed in I.A.No.4260 of 2019.

11 It is alleged that without sanctioning the settlement, respondents filed a miscellaneous application before the Tribunal contending that petitioner No.1 had failed to comply with the terms of the said compromise and therefore O.A.No.787 of 2018 should be revived. The same has been registered as M.A.No.61 of 2020, which is being contested by petitioner No.1 and is now pending adjudication before the Tribunal.

12 While the matter rested thus, respondents have issued the impugned auction notice dated 27.10.2021 fixing auction of the schedule property on 08.12.2021.

13 Aggrieved, present Writ Petition has been filed seeking the reliefs as indicated above. It is stated that the Tribunal is presently non-functional as there is no presiding officer. Therefore, petitioners have straightaway approached this Court under Article 226 of the Constitution of India instead of filing securitization application under Section 17 of the SARFAESI Act.

14 Various grounds have been raised in support of the challenge including withdrawal of O.A.No.787 of 2018 by the respondents on compromise. That apart, it is contended that there is violation of Rule 8(1) of the Security Interest

(Enforcement) Rules, 2002 inasmuch as the respondents had failed to affix the impugned notice at a conspicuous place of the schedule property.

15 This Court, by order dated 07.12.2021, directed the respondents not to confirm the sale pursuant to the auction sale and also not to issue the sale certificate.

16 Respondents have filed counter affidavit. A preliminary objection has been raised as to maintainability of the writ petition. It is stated that following the compromise, petitioner No.1 had withdrawn S.A.No.56 of 2019 on 16.09.2019. In fact, S.A.No.56 of 2019 was dismissed as withdrawn by the Tribunal on 16.09.2019. In the meanwhile, respondents took over physical possession of the primary security of petitioner No.1 on 20.07.2021. Aggrieved by the aforesaid action of the respondents, petitioner No.1 filed fresh securitization application under Section 17 of the SARFAESI Act before the Tribunal on 18.09.2021, filing number of which is SR No.729 of 2021. It is alleged that at the time of filing the fresh securitization application, the Tribunal was fully functional. Presiding officer of the Tribunal retired on attaining the age of superannuation only on 19.11.2021. During the *interregnum* petitioner No.1 did not take any steps to move and pursue the securitization application and now taking the plea that since there is no presiding officer and the Tribunal is non-functional, the present writ petition has been filed. Interestingly, in the

writ petition there is no mention about filing of the securitization application on 18.09.2021 before the Tribunal. Filing of the securitization application on 18.09.2021 which is pending is a material fact. But the same has been suppressed by the petitioners in the writ petition. Such suppression of material fact would disentitle the petitioners from any discretionary relief from the writ court.

16.1 It is stated that the outstanding dues of petitioner No.1 as on 30.11.2021 is Rs.316.65 crores.

16.2 Referring to the interim order passed by this Court on 07.12.2021, it is stated that since the respondents were not restrained from conducting the auction sale, the same was held on 08.12.2021 as per schedule. A total of 26 lots of property were put up for auction on 08.12.2021. Lot No.1 and lot No.4 could not be sold due to lack of bidders. But the remaining lots were sold.

17 On merit, respondents have stated that petitioner No.1 had entered into a term loan agreement on 30.08.2021 with a consortium of banks led by the erstwhile State Bank of Hyderabad, whereby an amount of Rs.136 crores was sanctioned and released as term loan to petitioner No.1. According to the respondents there was no delay in sanctioning and releasing the loan amount.



18 Subsequently, at the request of petitioner No.1 the joint lenders forum agreed to provide additional term loan of Rs.34.57 crores.

19 There was default by petitioner No.1 in repaying the loan amount. In view of such a situation, loan account of petitioner No.1 was migrated to the Stressed Assets Management branch of State Bank of India on 07.07.2017 to facilitate recovery of dues.

20 While acknowledging that petitioner No.1, vide letter dated 08.06.2018, had offered an amount of Rs.80 lakhs for OTS, it is stated that the same was not accepted and communicated vide letter dated 25.06.2018 as the amount offered was not reasonable.

21 In the meanwhile, respondent No.1 i.e. State Bank of India, Stressed Assets Management branch filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (briefly referred to hereinafter as 'the 1993 Act') against petitioner No.1 and others before the Tribunal for recovery of a sum of Rs.184,82,88,871-00. Simultaneously, respondent – State Bank of India issued demand notice dated 09.08.2018 to petitioner No.1 under Section 13 (2) of the SARFAESI Act.

22 At that stage, petitioner No.1 submitted a proposal, vide letter dated 11.11.2018 for OTS. The amount being low, the proposal of petitioner No.1 was not accepted.

23 Thereafter, respondent – State Bank of India issued possession notice dated 30.11.2018 under Section 13 (4) of the SARFAESI Act with regard to the primary security provided by petitioner No.1. Subsequently, respondent – State Bank of India issued possession notices dated 18.02.2019 with regard to collateral securities provided by petitioner No.1. Ultimately respondent – State Bank of India issued sale notice dated 10.01.2019. At that stage, petitioner No.1 filed S.A.No.56 of 2019 before the Tribunal. Though no interim order was passed by the Tribunal, the proposed auction did not materialize for want of bidders.

24 Petitioner No.1 and respondents filed a joint compromise memo dated 30.08.2019 before the Tribunal in O.A.No.767 of 2018. As per the said joint compromise, petitioners had agreed to pay a sum of Rs.112.00 crores in four installments plus 100% cash margin of Rs.2.70 crores towards full and final settlement of their liability.

25 In view of such settlement, respondents filed I.A.No.4620 of 2019 before the Tribunal to record terms of the compromise and on that basis to dispose of O.A.No.767 of 2018. By order dated 19.09.2019, Tribunal recorded the terms of compromise

and also the decision of the petitioners to withdraw all cases filed by them against the respondents immediately including S.A.No.56 of 2019. It was clarified that in the event of failure in payment of the compromise amount or any installments as agreed, the compromise settlement would be treated as cancelled and respondents would be entitled to the claim made in O.A.No.767 of 2018 after adjusting the amount paid by the petitioners. Accordingly, O.A.No.767 of 2018 was allowed by the Tribunal in terms of the joint memo of compromise. Liberty was granted to the respondents to approach the Tribunal for issuance of recovery certificate against the petitioners in the event of failure of the petitioners to pay the compromise amount.

26 As already noted above, S.A.No.56 of 2019 filed by the petitioners before the Tribunal was dismissed as withdrawn on 16.09.2019.

27 It is stated that petitioners defaulted; rather failed to comply with the terms of the compromise settlement. Therefore, respondents filed a miscellaneous application before the Tribunal for issuance of recovery certificate under the 1993 Act, which was registered as M.A.No.61 of 2020.

28 Recapitulating the sequence of events, respondents have stated that demand notice dated 09.08.2018 under Section 13 (2) of the SARFAESI Act was duly served upon the petitioners

but the outstanding dues were not paid. As a result, respondents issued possession notice dated 30.11.2018 under Section 13 (4) of the SARFAESI Act with regard to the primary security. It was duly published in newspapers - Hans India, Tirupati edition; Praja Sakthi, Chittoor edition; and Nava Telangana, Hyderabad edition on 04.12.2018. It is stated that such possession notice was also served upon the mortgagers besides being affixed on the outer wall of the mortgaged property. In respect of other mortgaged plots identical possession notices were issued on 18.02.2019 which were also published in newspapers – New Indian Express and Andhra Jyothi as well as affixed at the outer wall of the mortgaged properties besides being served upon the mortgagers. Thereafter respondents issued notice prior to sale on 25.03.2019. Respondents also filed application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate – cum – Senior Civil Judge, Chittoor who passed an order on 19.02.2021 appointing an advocate commissioner to take over physical possession of the primary security mortgaged by the borrower and to deliver possession thereof to the respondents. Accordingly, physical possession was taken over by the advocate commissioner on 20.07.2021 and handed over to the authorized officer of respondent – State Bank of India. Respondents issued sale notice dated 27.10.2021 proposing auction sale of the schedule property on 08.12.2021. Such sale notice was duly published in the

newspapers Andhra Jyothi and The Hindu on 28.10.2021 besides being dispatched to the petitioners by registered post on 27.10.2021. The said sale notice was also affixed at a conspicuous place of the mortgaged properties. As stated earlier, out of the 26 lots of properties put up for auction on 08.12.2021, 24 lots were sold out successfully.

29 On the basis of the above factual matrix, respondents seek dismissal of the writ petition.

30 Detailed submissions have been made by learned counsel for the parties which are more or less on pleaded lines. Therefore, it may not be necessary for us to refer to in detail such submissions. However, the submissions so made have received the due consideration of the Court.

31 At the outset, we may reproduce the averments made by the petitioners in paragraph No.18 of the affidavit filed in support of the writ petition, which reads as under:

“As a matter of right the petitioners are entitled to invoke their rights under Section 17 of the SARFAESI Act, 2002 and approach the competent DRT having jurisdiction over the matter. However, both the Tribunals constituted in the State of Telangana and the Tribunal constituted at Visakhapatnam have no Presiding Officers presently as all of them have superannuated and the vacancies have not been filled up. In view of the same, approaching the DRTs at the present times by filing an application under Section 17 of the Act is a redundant exercise and the petitioner company is left with no other remedy except to approach this Hon’ble Court. It is submitted that the above stated facts conclusively establish that the process of sale of the subject property being undertaken by the Respondent Bank is not done in accordance with law causing and unless and until this Hon’ble Court intervenes and set aside the E-Auction Sale Notice dated 27.10.2021 issued under Rule 8 (6), the petitioner would suffer grave prejudice and irreparable loss as the actions of the Respondents are in violation cases of the petitioners’ rights under Articles 14, 19

and 300A of the Constitution of India apart from being in violation of their statutory rights.”

32 From a reading of the averments made in the above paragraph, we find that according to the petitioners since the Tribunal is dysfunctional on account of there being no presiding officer, filing of an application under Section 17 of the SARFAESI Act would be a redundant exercise. Therefore, petitioners have approached this Court by filing the present writ petition. However, from the counter affidavit of the respondents, it is evident that petitioners had filed securitization application under Section 17 of the SARFAESI Act before the Tribunal on 18.09.2021 having SR No.729 of 2021. It has been pointed out that presiding officer of the Tribunal had retired on attaining the age of superannuation only on 19.11.2021. From 18.09.2021 till 18.11.2021 there was presiding officer and the Tribunal was functional. It is alleged that no steps were taken by the petitioners to get the securitization application registered and to obtain necessary order.

33 We need not enter into the aspect regarding petitioners not taking effective steps for getting the securitization application registered and moving the same before the Tribunal. This is besides the point. The point is that the factum of petitioners filing such securitization application before the Tribunal has not been mentioned in the writ petition; rather suppressed. Even petitioners have not

mentioned about withdrawal of SA No.56 of 2019 on 16.09.2019 whereafter the fresh securitization application was filed on 18.09.2021 bearing SR No.729 of 2021. Petitioners have also not stated that respondents had filed application under Section 19 of the 1993 Act before the Tribunal for recovery of the outstanding dues from the petitioners which was registered as O.A.No.787 of 2018 though there was an oblique reference to O.A.No.787 of 2018 in the context of the compromise settlement.

34 In **PRESTIGE LIGHTS LIMITED Vs. STATE BANK OF INDIA**<sup>1</sup>, Supreme Court held that the High Court exercises discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India. A Court of law is also a Court of equity. It is of utmost necessity that when a party approaches a High Court, he must candidly state all the material facts before the Court without any reservation. If there is suppression of material facts on the part of the petitioner or twisted facts have been placed before the Court, the writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter. Elaborating further, it was held that a prerogative remedy like the writ remedy is not a matter of course. A writ Court will bear in mind the conduct of the parties invoking such extraordinary jurisdiction. If the party does not disclose full facts or suppresses relevant

---

<sup>1</sup> (2007) 8 SCC 449

materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The very basis of writ jurisdiction rests in disclosure of true, complete and correct facts. If material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become impossible.

35 In a later judgment in **DALIP SINGH Vs. STATE OF UTTAR PRADESH**<sup>2</sup>, Supreme Court referred to its decision in **Prestige Lights Limited** (supra). Supreme Court also referred to several other decisions and held that it is imperative that the petitioner approaching the writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering merits of the claim.

36 Referring to its earlier decisions in **Hari Narain V. Badri Das**<sup>3</sup> and in **Ramjas Foundation V. Union of India**<sup>4</sup>, Supreme Court in **Bhaskar Laxman Jadhav Vs. Karamveer Kakasaheb Wagh Education Society**<sup>5</sup>, highlighted that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material; it is the obligation of the litigant to

---

<sup>2</sup> (2010) 2 SCC 114

<sup>3</sup> AIR 1963 SC 1558

<sup>4</sup> (2010) 14 SCC 38

<sup>5</sup> (2013) 11 SCC 531



disclose all the facts of the case and leave the decision making to the Court. It was held as follows:

“46. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The Petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.”

37 In the light of the above judicial pronouncements of the Supreme Court and having regard to the fact that there is not only clear suppression of material facts by the petitioners but also there is non-disclosure of relevant facts in a candid manner, we are not inclined to entertain the writ petition. We have decided deliberately not to adjudicate the merits of the petitioners' claim since the petitioners have filed securitization application before the Tribunal on 18.09.2021 bearing SR No.729 of 2021 which will be decided by the Tribunal on its own merits and in accordance with law. However, in view of the fact that petitioners have not approached this Court with clean hands, petitioners are not entitled to any relief, including interim relief in this writ proceeding.

38 Subject to the observations made above, the writ petition is dismissed. Costs of Rs.5,000-00 (Rupees Five Thousand only) is imposed on the petitioners, to be paid by the petitioners to the Telangana State Legal Services Authority within six weeks from today.

39 Miscellaneous petitions, if any, pending in this writ petition shall also stand dismissed.

---

**JUSTICE UJJAL BHUYAN**

---

**JUSTICE A. VENKATESHWARA REDDY**

Date: 17.01.2022

***L.R. Copy be marked  
B/o Kvsn***