

**HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

**WRIT PETITION No. 2949 OF 2024**

**ORDER :**

This Writ Petition is filed seeking a *mandamus* to declare the action of the 3<sup>rd</sup> respondent in issuing interest calculation dated 10.10.2023, intimation letter in E.P.No. 2 of 2022 dated 13.10.2023 and conducting open auction on the house of petitioner bearing No. 1-299/1, Ground, 1<sup>st</sup> Floor and pent house with total built up area of 3838.55 square feet on Plot No. 29, Block No.1, admeasuring 150 square yards at Padmavathi Colony, Shadnagar Municipality, Farooqnagar Mandal without giving opportunity to pay the amount to his account and trying to dispossess petitioner from his house as highly illegal, arbitrary, unconstitutional.

2. Petitioner is stated to be the owner and possessor of the mentioned house property. In need of money, to establish cloth store at Shadnagar, Farooqnagar Mandal, Ranga Reddy District, petitioner approached the 5<sup>th</sup> respondent bank and obtained mortgage loan of Rs.30,00,000/- in 2018 and has been regular in paying instalments. However, due to Carona pandemic, he sustained heavy loss and his account became 'Non-performance account' (NPA). Resultantly, the 5<sup>th</sup>

respondent initiated proceedings (OP.No.13 of 2020) before the Cooperative Tribunal, Telangana, wherein the Tribunal, without issuing notice / summons, passed the Award. Taking advantage of the same, the 4<sup>th</sup> respondent issued notice *vide* E.P.No.2 of 2022, but the Tribunal did not issue any notice/summons to petitioner and straight away ordered sale of immovable property in Form-VIII and Form-IX and issued the impugned Notice *vide* No.EP.No.02/2022-VB-MACCS and trying to attach the house property. It is stated that therefore, petitioner filed Writ Petition No. 9094 of 2023, wherein interim stay of all further proceedings pursuant to impugned notice was granted, subject to petitioner depositing 30% of the E.P. amount in three equal instalments. Petitioner was directed to deposit the first instalment on or before 01.05.2023; the second instalment on or before 01.06.2023 and the third instalment on or before 01.07.2023, failing which, the interim stay stands vacated automatically. While petitioner was rolling up his sleeves for money pooling, on the ground of delay, open auction was conducted on 12.10.2023 without any intimation /opportunity and he was tried to be dispossessed from the house, by issuing the impugned Interest Calculation dated 10.10.2023.

3. During the hearing, it is brought to light that Sri Rapolu Bhaskar, learned counsel on behalf of the very same petitioner filed Writ Petition No. 28148 of 2023 questioning the notice dated 04.10.2023. The said notice directed petitioner to vacate the subject house and to conduct open auction on 12.10.2023. However, the Writ Petition was dismissed as infructuous recording the fair submission of learned counsel that cause does not survive for adjudication. Further, the interim order dated 10.04.2023 in Writ Petition No. 9094 of 2023 was also vacated by order dated 10.07.2023 whereunder the 5<sup>th</sup> respondent bank was granted liberty to proceed with fresh auction of the mortgaged property. A perusal of the writ affidavit discloses that there is no whisper about the above-mentioned orders. When this Court vacated the interim order and directed the bank to conduct fresh auction of the property, without averring the said facts, petitioner approached this Court afresh seeking a direction to the 3<sup>rd</sup> respondent not to conduct open auction on the foot of the order dated 10.10.2023 and intimation letter in E.P.No. 2 of 2022 dated 13.10.2023 impugned in this Writ Petition.

4. Concealing / suppression of material facts would amount to abuse of process of law, playing fraud with Court as

well as opposite party. The jurisdiction exercised by the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that petitioner approaching the writ Court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state the facts which are relevant to the litigation. If he / she withholds some vital / relevant material, in order to gain advantage over the other side, then he / she would be guilty of playing fraud which cannot be countenanced. The parties have to disclose the details of all legal proceedings and litigation either past or present concerning any part of the subject matter of dispute which is within their knowledge. In case, according to the parties to the *lis*, no legal proceedings or court litigation were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

5. Alas, our judicial system is grossly afflicted with frivolous litigation, hence, ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. Litigation like the present one is contributing fuel to fire in mounting pendency, disabling the Courts to discharge the prime duty of justice dissemination.

One needs to keep in mind that there is an innocent sufferer on the other side of every irresponsible and senseless claim.

6. This Court expresses its dissatisfaction on the unbecoming conduct of a legal practitioner such as the counsel for petitioner in this case for wasting judicial time by filing cases suppressing the facts. It is a well-known fact that there is huge pendency of cases and pressure on Judges in disposing of such cases is enormous. Genuine litigation is not getting the attention of this Court by this type of frivolous litigation. Earlier, on couple of occasions, this Court cautioned learned counsel to refrain from filing such type of cases which benefit no citizen. Learned counsel filed Writ Petition No. 37851 of 2022 wherein, for suppression of material events, this Court imposed Rs.1,00,000/- to petitioner. Thereafter, in Writ Petition No. 2666 of 2004, for the very same reason, this Court imposed costs of Rs.1,00,000/-, however, at the request of his junior colleagues, the said order was recalled. On the next occasion, on the same ground, when this Court warned the learned counsel, he sought permission to withdraw the Writ Petition. Keeping in view the financial status of the litigant, this Court has shown lenience and disposed of the Writ Petition. Still, learned counsel has been exhibiting the same attitude which forces this Court to

impose exemplary costs on petitioner as well as learned counsel, to be quantified at Rs.15,00,000/- (Rupees fifteen lacs only) so as to prohibit them, in future, from filing cases which result in taxing the judicial time.

7. With the above observations, the Writ Petition is dismissed with costs of Rs. 15,00,000/- (Rupees Fifteen lacs only) to be deposited with Telangana High Court Legal Services Committee within four weeks from today. In default, needless to say, Registry shall list the Writ Petition before the Court.

8. Consequently, the miscellaneous Applications, if any shall stand closed.

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**NAGESH BHEEMAPAKA, J**

14<sup>th</sup> February 2024

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