
(2010) 04 OHC CK 0034
In the Orissa High Court

Kartika Kisan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 111 CLT 188 : (2010) 1 OLR 947

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed with a prayer for quashing the order of confirmation of sale (Annexure-2), passed by the Principal Officer of the Co-operative Department in the district of Sarmbalpur and ARCS, Sambalpur Circle, u/s 103 (4) Schedule-1 of Orissa Co-operative Societies Act, 1962 (Orissa Act II of 1963)(in short, the "O.C.S. Act") in E.P. No. 674/1999-2000 and the entire proceedings taken by the opposite parties in connection with the said order.

2. The facts and circumstances giving rise to the present writ petition are that opposite party No. 6, Munikisan, had availed a loan of Rs. 50,000/- from the O.P.-Bank to install a Flour Mill. The petitioners stood guarantors by mortgaging their properties described in the R.O.R. under Annexure-1. Opposite Party No. 6 could not repay the said loan as per the terms of the loan agreement. As the opposite party No. 6 defaulted to pay back the loan amount, opposite party No. 3, Asst. Registrar, Co-operative Societies, Sambalpur Circle, sold the property in favour of opposite party No. 5, Marayan Mohapatra, in public auction held on 29.6.2001 against an amount of Rs. 90,500/-. Consequently, the Principal Officer of the Co-operative Department confirmed the said sale on 6th October, 2001 by the impugned order passed under Annexure-2. Being aggrieved, the petitioner-guarantors have filed the present writ petition.

3. Miss. Deepali Mohapatra learned Counsel appearing on behalf of the

petitioners vehemently argued that actions of the opposite parties, inasmuch as the order of confirmation of sale of immovable properties under Annexure-2 and the proceedings initiated by the opposite parties are illegal, arbitrary and unsustainable in law. She strenuously argued that the properties of the petitioners were sold without complying the provisions of Section 91(2)(a)(ii) of the O.C.S. Act and Rule 141 of Orissa Cooperative Societies Rules (in short "O.S.C. Rules"), The petitioner are poor Scheduled Tribe and illiterate people and their properties have been sold without complying with the relevant provisions of the Statute and in violation of the principles of natural justice. The O.P.-Bank assumes no jurisdiction to sell the properties of the petitioners to Opp. Party No. 5 without following due process of law. The petitioners had no knowledge that their properties had been mortgaged by opposite party No. 6 for taking loan from opposite party No. 3. They are all along in possession of the properties in question and possession has not been delivered to opposite party No. 3. Only when opposite party No. 5 tried to take possession of the properties, the petitioners could know about the sale and filed this writ petition on 26.4.2002, i.e., before the sale certificate was issued on 13.05.2002. This Court vide order dated 6.5.2002 granted interim order of status quo. Opposite Party No. 3 has not complied with the provisions of Rule 141 of the Orissa Co-operative Societies Rules, (in short, "O.C.S. Rules"). One Benga Kisan and one Ura Kisan died during pendency of the proceedings who had share in the joint family property and their properties were sold without following due process of law. Ac.15.00 of land was sold at throw away price ignoring the petitioner's interest.

4. Learned Counsel appearing on behalf of opposite parties 3 and 4- Bank, submitted that the petitioners executed a mortgage bond and one Gonga Kisan, brother of Muni Kisan, had attested the mortgage bond and ; the non-encumbrance certificate for twelve years was also produced. All the co-sharers executed a "Kartaship" declaration in favour of Muni Kisan. Thereafter opposite party No. 4, Bank disbursed Rs. 50,000/- to Muni Kisan who paid only Rs. 1630/- till 7.1.1999. Since the loan amount was not cleared up in time, on 7.1.1999, the Committee of Management of Jharsuguda CARD Bai.k Ltd., resolved to initiate a case u/s 91 of the OCS Act. Thereafter, the Secretary, Jharsuguda Co-operative Agricultural Bank, Ltd. issued 90 days notice to all the co-sharers by registered post with A.D. Kartika Kisan, Muni Kisan and Ganga Kisan had received the said notice and notices sent to Kondo Kisan, Kandora Kisan, Benga Kisan, Urkuli Kisan, Harilal Kisan, Dutia Kisan, Tima Kisan, Ura Kisan were returned un-served with the postal remark "undelivered". Hence, the notices were served by affixture by the help of concerned area Supervisor. Copies of the notices are annexed as Annexure-H/4.

After expiry of 90 days, the O.P. No. 4-Bank instituted a case u/s 91 of the OCST Act before the Principal Officer of Co-operative Department in Sambalpur district. The Assistant Registrar of Co-operative Societies, Sambalpur Circle (for short "ARCS") admitted the case and issued notice under Rule 141 to Muni Kisan and the other co-sharers returnable within fifteen days, which were duly served by

the Area Supervisor on 07.08.2000.

After expiry of 15 days since Sri Kisan failed to deposit the amount specified in the notice the Sale Officer issued 30 days" notice on 23.08.2000 to all the co-sharers under certificate of posting fixing the date of sale to 29.09.2000.

Before the sale date, due proclamation was made in the village and nearby villages by beat of drums for two days. Copies of the notice dated 25.06.2001 and 26.06.2001 are annexed as Annexure-M/4. Finally on 29.06.2001, three bidders came forward to take part in auction sale. Since O.P. No. 5-Narayan Patra was declared the highest bidder, the sale was settled in his favour. Copy of the bid sheet is annexed as Annexure-N/4. After complying with the above formalities, the Sale Officer returned the file to the Principal Officer who has confirmed the sale on 06.10.2001 and issued sale confirmation order. The Principal Officer issued sale certificate on 13.05.2002 in favour of O.P. No. 5 and intimated all concern and obtained acknowledgement from all concern. Further the lands were also demarcated by Court Amin on 29.06.2002.

5. Mr. P.K. Rath, learned Counsel appearing on behalf of O.P. No. 5 raised preliminary objection regarding maintainability of the writ petition on the ground of non-availing the alternative remedy under Schedule-I of the Cooperative Societies Act. Mr. Rath in support of his contention, relied upon a decision of the apex Court in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopinath and Sons and Ors. (1992) SCC (2) Supp. 312. According to Mr. Rath, the confirmation of sale challenged by the petitioners has already taken shape of certificate of sale by which absolute transfer of title has been made in favour of the purchaser. Under paragraph 6 of Schedule-I, the petitioners have lost all their right, title, interest and possession over the properties and it is not open to the petitioners to challenge such confirmation which has already attained its finality. The Bank while selling the properties has scrupulously followed the procedures prescribed in law. The present O.P. No. 5 has deposited the bid price in the year 2001. Therefore, after a lapse of considerable period of seven years, this Court should not unsettle the settled possession which will amount to grant of premium to the defaulters of the Bank. Thus, the writ petition is liable to be dismissed.

6. On the rival contentions of the parties, questions that fall for consideration by this Court are as follows :

(i) Whether existence of alternative remedy can be a bar to exercise jurisdiction under Article 226 of the Constitution of India in the instant case?

(ii) Whether before putting the properties of the petitioners to public auction, the relevant statutory provisions were complied with and, if not, will that vitiate a confirmed sale?

(iii) Whether a sale can be set aside in a case where for recovery of some paltry amount a big property has been put to public auction?

7. The first question relates to maintainability of the writ petition on the ground of non-availing of the alternative remedy. Mr. Rath, learned Counsel appearing on behalf of the opposite parties submitted that alternative remedy is available to the petitioner under Schedule 1 of the Orissa Co-operative Societies Act. Reliance was placed in the decision of the Hon''ble Apex Court in H.P. Gandhi, Excise and Taxation Officer-cum-Assessing Authority (supra) wherein the apex Court held that when a hierarchy of appeals is envisaged by a taxing statute, it is generally to be insisted that an assessee must go through the statutory proceedings.

The Hon''ble apex Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, observed that existence of an alternative remedy is not always a sufficient reason for refusing a party quick relief by writ or order prohibiting an authority from acting without jurisdiction or from continuing such action.

Law is well settled that the writ jurisdiction is discretionary in nature and must be exercised in furtherance of justice. The Court has to keep in mind that its order should not defeat the interest of justice nor it should permit an order to secure dishonest advantage or perpetuate an unjust gain or approve an order which has been passed in contravention of the statutory provisions. (See Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, ; K.D. Sharma v. Steel Authority of India Ltd. and Ors. AIR 2008 SCW 6654).

In Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, , the apex Court observed that Courts are concerned with substantial justice and prevent to perpetuate grave injustice to parties and whenever the order is one which shocks the conscience of the Court or suffers on account of disregard to the form of legal process or with violation of the principles of natural justice by the statutory provisions, the Court would interfere. The Court would never do injustice nor allow injustice being perpetuated just for the sake of upholding technicalities.

In Ashutosh Vs. State of Rajasthan and Others, , the apex Court held that when substantial justice must be given preference over technicalities and Court must do justice at all costs and at the same time the Court should not forget that justice should be tempered with mercy.

In the present case the contention of the petitioner is that they are poor Scheduled Tribe illiterate people and their properties have been sold out at a throw away price without complying with the prescribed statutory provisions and in violation of the principles of natural justice. The further contention of the petitioners is that the actions of the opposite parties are illegal, arbitrary and without jurisdiction. In these circumstances, this Court feels that the present writ petition is maintainable even if the same is filed without exhausting the statutory remedy that is available to the petitioners.

8. The second question relates to non-compliance of statutory provisions before putting the properties of the petitioners to public auction. Needless to say that

public money has to be recovered from the defaulters who do not repay the loan amount to the financial institutions. This does not mean that financial institutions are at liberty to dispose of the secured asset of the defaulters in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions and principles of natural justice.

In *Lachhman Dass Vs. Jagat Ram and Others*, the apex Court held that a right to hold property is constitutional right as well as human right. A person cannot be deprived of his property except in accordance with provisions of the statute. (Also see *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, and *Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood and Ors.* (2007) 11 SCC 40)

Thus, the condition precedent for taking away someone's property or disposing of the secured asset is that the authority must ensure compliance of the statutory provisions.

It is the settled law that when the action of the State or its instrumentalities is not on par with the rules or regulations and supported by the statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid.

In *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , the Supreme Court observed that the ratio is that the rules or the regulations are binding on the authorities.

Whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law; and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegality and it becomes the solemn duty of the Court to deal with the persons violating the law with heavy hands. (See *R.N. Nanjundappa Vs. T. Thimmiah and Another*, , *Sultan Sadik Vs. Sanjay Raj Subba and Others*,).

Thus the legal position remains, every statutory provision requires strict adherence for the reason the statute creates rights in favour of the citizens, and, if any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. (See *Swastik Agency and Others Vs. State Bank of India, Main Branch and Others*, .

The apex Court in *Badrinath Vs. Government of Tamil Nadu and Others*, , observed that once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically. Non-compliance of mandatory requirements vitiates the proceedings.

9. Now, we shall see what are the safeguards provided in the Act, 1962 and Rules, 1965 to protect the interest of the owner of the property, which has been mortgaged with the financier and how those are adhered to.

Section 91 of the Act, 1962 deals with power of sale when to be exercised by the State Cooperative Agricultural Rural Development Bank (for short "OSCARD Bank") or Cooperative Agricultural Rural Development Bank (for short "CARD Bank"). Section 91 envisages that notwithstanding anything contained in T.P. Act, 1982, where a power of sale without intervention of the Court is expressly conferred on the OSCARD Bank or the CARD Bank by a mortgaged deed the Board or Committee of such Bank or any person authorized by such Board or Committee in this behalf shall in case of default payment of mortgaged property or any part thereof have power to bring the mortgaged property to sale without intervention of the Court after hearing the objection, if any, of the mortgager. However, such power cannot be exercised by the Board or Committee of OSCARD and CARD unless and until the conditions enumerated in Sub-section (2) of Section 91 are complied with. Therefore, in order to exercise power conferred under Sub-section (1) of Section 91, notice as contemplated u/s 91(2)(a) has to be served on the mortgager; any person who has interest in the property etc. The second notice on the persons referred to in Sub-section (2) of Section 91 is contemplated under Rule 141(1). This Rule says that upon expiry of three months from the date of the notice under Clause (a) of Sub-section (2) of Section 91 if the sum due under the mortgage is not paid, the OSCARD Bank or the CARD Bank or any person authorized by it in this behalf may after considering any objection made within that period by any person entitled to such notice apply to the Principal officer of the Cooperative Department of the area to sell the mortgaged property or any part thereof and such officer shall after giving notice in writing to all the persons referred to Sub-section (2) of Section 91 direct the Sale Officer authorized in this behalf to sell such property in public auction in the manner prescribed and report the result thereof to the Bank.

A third notice by registered post with A.D. on the mortgagers is contemplated in Sub-rule (3) of Rule 141. This Rule says that on receipt of the application, the Principal Officer shall give the notice in writing by registered post with A.D. to all the persons named in the application that he intends to sell the property giving such particulars of the property to be sold, if the amount claimed by the Bank including the expenses incurred by it in the service of notice is not paid within the time allowed by him. Sub-rule (4) of Rule 141 provides if before expiry of the time allowed in the notice under Sub-rule (3) the amount specified in such notice is not paid, the Principal Officer may authorise any officer subordinate to him to act as Sale Officer and conduct sales on this behalf. Sub-rule (5) of Rule 141 says that the Sale Officer shall thereupon issue proclamation of sale and the parties named in the application are entitled to a copy of the proclamation. This is the fourth stage where the mortgager or, as the case may be, whose property is going to be sold in public auction is entitled for a copy of the publication of proclamation.

10. Under above backdrop, now we may examine how the statutory requirements have been complied with by the concerned opp. parties before putting the property of the petitioners to sell in public auction.

In paragraph-3 of the writ petition, the petitioners have averred that the mandatory requirements of the provisions of Section 91(2)(a) of the Act have not been complied with. Opposite party No. 3 in paragraph-4 replied that the notice under Rule 141(3) of the Orissa Co-operative Societies Rules, 1965 issued by the Principal Officer and the ARCA, Sambalpur Circle were duly served in person upon the executants through the Area Supervisor on 17.08.2000 and, therefore, the provisions of Section 91(2)(a)(ii) of the Act have been complied with. In Paragraph 7 of the counter though reference has been made to paragraph 8 of the writ petition nothing has been specifically stated about service of notice as contemplated in Section 91(2). Thus, opp. Party No. 3 has not stated specifically that notice as contemplated u/s 91(2) has been served on the petitioners. It is not correct on the part of the opp. Party No. 3 to say that the requirement of service of notice as contemplated u/s 91 (2) has been complied with by serving a notice as required under Sub-rule (3) of Rule 141.

A conjoint reading of Sub-rules (1), (2) and (3) of Rule 141 makes it clear that issuance of notice as contemplated under Sub-rule (3) of Rule 141 comes only after expiry of 3 months from the date of notice under Clause (a) of Sub-section (2) of Section 91. Thus, notice as contemplated under Sub-Rule (3) of Rule 141 is not the same notice as contemplated u/s 91(2)(a) of the Act. The reply of opposite party No. 3 in this regard is completely misleading.

Opposite Party No. 4 in their reply to averment made in paragraph 3 of the writ petition has not stated anything in paragraph 4 of the their counter affidavit regarding service of notice u/s 91(2)(a) of the Act, 1962 although in paragraph-4 of the counter affidavit reference has been made to paragraph 3 of the writ petition. However, in paragraph 8 of the counter affidavit, opp. Party No. 4 stated that had issued 90 days notice to all co-sharers with registered post with A.D. Sri Kartika Kisan, Muni Kisan and Ganga Kisan received the said notice and notice meant for Sri Kando Kisan, Kandara Kisan, Benga Kisan, Urkili Kisan, Harilal Kisan, Dutia Kisan, Tima Kisan and Ura Kisan returned un-served. Hence, the notices were served by affixture through the concerned Area Supervisor. Copies of the notice are annexed to the counter affidavit as Annexure-H/4 series. Under Annexure-H/4 series one notice u/s 92 of the Act in the name of Muni Kisan is available at page 42 which is claimed to have been served by Regd. Post with A.D. Copy of notice in the name of other two persons, namely, Ganga and Kartika Kisan stated to have been served by Regd. Post with A.D. is not available from Annexure-H/4. There is no copy of notice u/s 91 in the name of Muni Kisan, Kartika Kisan and Ganga Kisan. Another copy of the illegible notice is available in the name of Benga Kisan, Ura Kisan, Tima Kisan, Kando Kisan. This stated to have been served by affixture through the Area Supervisor. No notice in the name of Kandora Kisan, Urkali Kisan, Dutia Kisan, Harilal Kisan claimed to have been served by affixture is available under Annexure-H/4.

In view of the above, we are not satisfied that notice as contemplated u/s 91 (2) (a) of the Act, 1962 has been served on the petitioners.

11. Counter affidavit filed by opp. parties 3 and 4 are silent about service of notice as contemplated in Sub-rule (1) of Rule 141.

12. As regards service of notice under Sub-rule (3) of Rule 141 is concerned, opp. Party No. 3 in paragraph 4 of the counter affidavit stated that notice under Rule 141 (3) of the Rules, 1965 issued by the Principal Officer, ARCS, Sambalpur Circle was duly served upon the petitioner-executants of mortgaged bond through the Area Supervisor on 17.08.2000 and a copy of the notice served along with the service evidence have been annexed to the counter affidavit as Annexure-C/3. Opp. Party No. 4 in paragraph 9 of their counter affidavit stated that on careful perusal of documents filed, the ARCS admitted the case and issued notice returnable under Rule 141 of Sri Mani Kisan and other co-sharers which has been duly served through Area Supervisor on 07.08.2000. A copy of the said notice is annexed to the counter affidavit as Annexure-I/4. The opp. Party No. 4 has not stated under which provision of Rule 141 notice was issued. However, Annexure-I/4 at page 58 and the document of acknowledgement attached to such notice at page 59 show that it is a notice under Rule 141(3) and similar to Annexure-C/3 attached to counter affidavit filed by opp. Party No. 3 claiming the said notice under Rule 141(3) said to have been served on 17.08.2000.

A plain reading of Sub-rule (3) of Rule 141 makes it amply clear that only after receipt of the application, the Principal Officer shall give notice in writing by Registered Post to all persons named in the application that he intends to sell property giving particulars of the property to be sold, if the amount claimed by the bank including expenses incurred by it in service of the notice is not paid within a time to be allowed by him.

Therefore, the claim of the opposite No. 3 that notice under Rule 141(3) has been served by the Area Supervisor on 17.08.2000 (served on 07.08.2000 according to OP No. 4) is in violation of the provisions contained under Sub-rule (3) of Rule 141.

13. The opp. Party No. 3 has not stated anything regarding service of copy of the publication of proclamation on the petitioners. However, opp. Party No. 4 stated in paragraph 10 of the counter affidavit that after expiry of 15 days since Sri Kisan failed to deposit the amount under the notice, the Sale Officer issued 30 days notice on 23.08.2000 to all co-sharers under certificate posting fixing the sale date to 29.09.2000. The copy of the said notice along with the postal acknowledgements in support of despatch of such notice are annexed to the counter affidavit as Annexure-J/4.

Publication of the proclamation for sale notice of immovable property as provided under Rule 141 (5) is the last step for sale of property mortgaged to the Bank. Under this Rule, the petitioners are entitled to a copy of the proclamation. Paragraph-5 of the said notice further provides that the sale shall be stopped if the defaulter or other persons acting on their behalf or claiming an interest over

the property mortgaged, tenders payment of the full amount due including interest and other charges at any time before the sale takes place. Paragraph-6 of the said notice further provides that the sale will not be final until it is confirmed by the Principal Officer of the Cooperative Department in the district, and a period of 30 days will be allowed between the sale and confirmation to admit the petitions to set aside the sale. It is not understood why such an important notice by which the owner of the immovable property are going to be deprived of their property have been sent by under certificate of posting instead of registered post with A.D. There is nothing on record to show that such notice of sale has been served/received on/by the addressees. Learned Counsel appearing on behalf of the opp. parties 3 and 4 could not satisfy this Court on this point.

In *Kela Gauda v. Krishna Panigrahi and Ors.* 1987 (I) OLR 477, this Court held that the procedures under Rule 141 are mandatory. Sale held without compliance of the Rules is void.

Annexure-N/4 is bid sheet. Against column 2 the date and time of public auction sales has been written as "29.06.2001". A close look to the said date reveals that the date has been over-written. This creates suspicion in the minds of the Court.

14. The financial institutions are legally bound to ensure strict compliance of the statutory requirements particularly all those provisions which are meant to protect the interest of the borrower. This is necessary to protect the borrowers and guarantors in any kind of depressed sale of their properties and to certain extent to prevent any kind of collusion either by the authorities or by the auction bidders. Non-compliance of the statutory provisions would render the proceedings invalid altogether on the point of non-compliance of statutory requirements. In the present case, there is flagrant violation of statutory requirements provided in Section 91 and Rule 141 of the Act, 1962 and Rules, 1965 respectively, which vitiates the confirmed sale of the mortgaged property.

15. The third question is that as to whether in a case where a big property is sold for recovery of a petty amount, the sale can be set aside. A plain reading of Section 91 of the O.C.S. Act 1962 and Rule 141 of the O.C.S. Rules 1965 makes it clear that while a mortgaged property is put to sale in public auction to realize the defaulted amount, utmost care should be taken to protect the interest of the owner of the property. Sub-rule (7) of Rule 141 of O.C.S. Rules provides that the Sale Officer shall have the power to divide the property in the lots as he thinks it necessary in the interest of the Debtor or the Bank. In the present case the entire property of the guarantors measuring Ac.15.45 acres of land was put to auction for recovery of the defaulted amount of Rs. 85,317/- against a loan of Rs. 50,000/- advanced to the loanee who has repaid an amount of Rs. 1,630/- out of the total loan amount. The allegation of the petitioner-guarantors is that the value of the their properties is much higher than the public auction price of Rs. 90,500/-. It is further alleged that the opposite parties have sold the

property at a throw away price of Rs. 6,000/- per acre. It is claimed that the market value of the land during the relevant time was Rs. 2,00,000/- per acre. However, it is stated at the Bar that the Government acquired the properties under the Land Acquisition Act for Vedant " Rs. 2,30,000/- per acre in that area. As it appears, there is abnormal wide gap between the market value and the value at which the properties of the petitioners were sold by the Bank. No material has been brought to the notice of the Court to show that any attempt has been made by the opposite parties to take a decision in terms of Sub-rule (7) of Rule 141 of O.C.S. Rules to divide the properties in lots keeping in mind the interest of the guarantors. It is needless to say that the duty of a financial institution is not only to protect its own interest but also to protect the interest of the Debtor and/or the mortgager/ guarantor when it puts their properties to public auction and they must act in a fair manner. In S. Mariyappa (Dead) by Lrs. and Others Vs. Siddappa and Another, the Hon''ble Supreme Court held that it is duty of the executing Court to consider whether sale of only a part of the property would be sufficient to meet the decretal amount and, in case such a decision is not taken, the sale deserves to be set aside.

16. For the reasons stated above, all the proceedings initiated u/s 91 of the O.C.S. Act, 1962 and Rule 141 of Rules 1965 are liable to be quashed being in flagrant violation of the statutory provisions. In such a fact situation, the opposite party No. 5 is entitled to get refund of the amount deposited by him. The O.P.-Bank shall refund the amount deposited by opposite party No. 5 with interest " 10% per annum within a period of four weeks from today. The O.P. Bank is directed to recalculate the amount due from the loanee including interest thereon and issue a fresh demand notice to be served upon the loanee as well as the petitioner-guarantors within four weeks from today. It is further directed that as the O.P.-Bank proceeded illegally, it is not entitled to claim for legal expenses from the loanee/petitioner-guarantors. On receipt of the recomputed demand from the Bank, the petitioner-guarantors shall deposit the same within four weeks from the date of receipt failing which the Bank shall be at liberty to proceed against the petitioner-guarantors for making full recovery of the outstanding dues in accordance with law.

17. In the result, the writ petition succeeds and is allowed. No costs.

A.S. Naidu. J.

I agree.