

(2013) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No's. : 11862, 13872 and 13882 of 2008 and 16650 of 2011

Santosh Kumar Sony

APPELLANT

Vs

Chairman, A.P. State Co-operative Tribunal and Others

Smt. Radha Bain Vs The Dy. Registrar of Cooperative
Societies, Officer on Special Deputy, The Vasavi Cooperative
Urban Bank Limited and Others
 Nisha Arora, Narender
Kaur and Smt. Veera Valli (Died) Per L.Rs. (i.e. Petitioners 1
and 2 above) Vs The Government of Andhra Pradesh, The
Deputy Registrar of Cooperative Societies and Officer on
Special Duty, The Vasavi Co-operative Urban Bank Ltd. and
The Vasavi Co-operative Urban Bank Ltd.

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 61, 72, 76
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 21 Rule 64, Order 21
Rule 69, Order 21 Rule 71, Order 21 Rule 72
Constitution of India, 1950 — Article 226

Citation : (2014) 1 ALD 387 : (2013) 6 ALT 65

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : S. Sridhar in Writ Petition No. 11862 of 2008, Sri Vijay Kumar Heroor in Writ Petition No. 13872 of 2008 and Writ Petition No 13882 of 2008 and Sri N.V. Anantha Krishna in Writ Petition No 16650 of 2011, for the Appellant; N.V. Anantha Krishna, Counsel for Respondent Nos. 2 and 3 in Writ Petition No. 11862 of 2008, Counsel for Respondent Nos. 3 and 4 in Writ Petition No. : 13872 of 2008 and Writ Petition No: 13882 of 2008, Sri P.V.L. Bhanu Prakash, Counsel for Respondent No. 4 in Writ Petition No. : 11862 of 2008, Counsel for Respondent No. 2 in Writ Petition No. : 13872 of 2008 and Writ Petition No: 13882 of 2008 and Counsel for Respondent No. 3 in Writ Petition No: 16650 of 2011 and Sri A. Ananda Rao, Counsel for Respondent No. 5 in Writ Petition No. : 11862 of 2008, Counsel for Respondent No. 1 in Writ Petition No. : 13872 of 2008 and Writ Petition No. : 13882 of 2008 and Counsel for Respondent No. 2 in Writ Petition No: 16650 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, J.—As the parties to these proceedings are agitating in respect of a common issue, they are being disposed of by this common order. Late Smt. Veera Valli along with her two daughters, viz., Smt. Nisha Arora and Smt. Narender Kaur (for short, "the borrowers") availed loans from the Vasavi Co-operative Urban Bank Ltd. (for short, "the Bank") amounting to Rs. 11,50,000/- each under loan account Nos. 542, 541 and 540 and mortgaged two items of properties to the bank. They are:-

(i) a house bearing No. 1-7-390, admeasuring 1,186 Sq. yds. situated at Bakaram, Hyderabad and

(ii) shops bearing Nos. 1-7-392/1 to 1-7-392/22 at Bakaram, Hyderabad.

2. Smt. Veera Valli died on 01.05.1996, leaving behind her two daughters Smt. Nisha Arora and Smt. Narender Kaur as her legal heirs.

3. As the amounts were not paid by the borrowers to the Bank, it initiated proceedings u/s 61 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, "the Act") before the Dy. Registrar of Cooperative Societies, City Circle, Hyderabad in ARC. Nos. 410/96.J1, 412/96.J1 and 411/96.J1 for recovery of the outstanding loan amounts from them. In each of these ARC's, the Bank claimed a sum of Rs. 15,28,212/- as on 20.08.1995, together with further interest @21% p.a. plus penal interest @2% p.a. and other incidental charges till the date of realisation.

4. The Co-operative Sub-registrar/arbitrator issued notices to the borrowers. Smt. Nisha Arora and Smt. Narender Kaur appeared before the Arbitrator and brought to his notice that Smt. Veera Valli, their mother, died on 01.05.1996, that they are her legal heirs and they accept the loan liability but are unable to pay the due amounts. They prayed that the loan dues may be realised by selling the properties mortgaged to the Bank by disposing them of according to the rules. They also gave a written statement before the arbitrator stating that they have no objection for realising of the decretal amounts by way of sale of the mortgaged properties.

5. By separate orders dt. 27.02.1997, ARC. Nos. 410/96.J1, 412/96.J1 and 411/96.J1 were decreed as prayed for permitting the Bank to recover the entire dues jointly and severally from Smt. Nisha Arora and Smt. Narender Kaur, personally or from movable or immovable properties or both and from the properties of Smt. Veera Valli, who had expired.

6. No appeal has been preferred against the awards passed by the arbitrator and the said awards became final.

7. Item no. (i) i.e., the property bearing House No. 1-7-390, Musheerabad, Bakaram, Hyderabad was initially brought to sale on 06.08.1997 and 12.10.1997. The auction failed for want of bidders. Smt. Nisha Arora and Smt.

Narender Kaur filed CTA. No. 249 of 1997 before the Andhra Pradesh Co-operative Tribunal, Hyderabad (for short, "the Tribunal") challenging the auction. The auction was held again on 06.08.1998, but that also failed for want of bidders. On a joint memo filed by the borrowers and the Bank, the Tribunal passed an order dt. 24.06.1998 issuing certain guidelines to the Sale Officer to conduct the sale of the said property.

8. On 01.03.1999, the borrowers filed IA. No. 123 of 1999 in the said CTA praying the Tribunal to direct the Sale officer to conduct the sale of item no. (i) by public auction as per the orders passed by the Tribunal on the joint memo dt. 24.06.1998 and to direct the Sale officer to issue sale proclamations by giving wide publicity for the public auction.

9. By order dt. 07.04.1999 in IA. No. 123 of 1999 in CTA. No. 249 of 1997, the Tribunal directed the Dy. Registrar of Co-operative Societies, City Circle, Hyderabad (Urban), to appoint Sale officer afresh and further directed that the Sale officer so appointed shall follow the following guidelines in conducting the sale of the said property:

(i) That the sale officer shall follow the procedure prescribed under Rule 52 of APCS Rules, 1964 read with Order 21, Rule 64 to 69, 71, 72 C.P.C. for preparation of sale-proclamations and sale by public auction.

(ii) Under Order 21 Rule 64 C.P.C. it is mandatory that any property attached by it and liable for sale, should be sold with such portion as may necessary to satisfy decree and the sale proceeds be paid to the Decree holder. So the sale officer at first instance shall sell the ground floor by fixing the market value basing on the Commissioners report. If for any reason the bidders are not forth coming to bid for the upset price fixed for the ground floor or that the bid amount does not satisfy the decree amount flat No. 1 and 2 values as per Commissioners report in case market value fixed by the commissioners report does not attract the bidders, the upset price may be reduced by 10% of its value fixed.

(iii) That the interested bidders shall deposit E.M.D. as fixed by the sale officer.

(iv) That both the decree holder and judgment debtor shall be allowed to set up their own bidders subject to deposit of E.M.D.

(v) That the counsel for the parties be allowed to watch the auction and to asset the parties.

(vi) That sale officer shall exercise all reasonable care infixing the upset price of the portions either sold separately or collectively.

(vii) That the sale proclamations be issued after 9-4-99 by giving wide publicity in getting the auction notice published in English and Telugu daily publications like Deccan Chronicle or Eenadu, Vartha etc., which has wide circulation besides distributing pamphlets noting brief details of the value of property, debt,

particulars of property, location, date of sale and time. Time of auction to be commenced at 12.30 noon so as to facilitate any bidders to get demand draft on the same day.

(viii) That the judgment debtor shall co-operate with the sale officer in conducting the sale peacefully and the sale officer take police aid to prevent any untoward incidents at the time of auction.

(ix) That the sale officer shall mention in the proclamations that the property would be sold by putting the ground floor to auction at first, and if it could not be sold the other portions would be included for sale.

(x) That the sale officer to conduct auction on the same day either the individual portions of 1st and 2nd flats or the total property depending upon the availability of bidders and fetching of the amount.

10. The item (i) of property, with reference to which the above orders were passed, was brought to sale on 20.08.1999 but the auction failed for want of bidders.

11. On 19.01.2000, CTA. No. 249 of 1997 was dismissed by Tribunal holding that the order passed in IA. No. 123 of 1999 dt. 07.04.1999 laying down the guidelines for conduct of auction holds good and it shall be followed in future in holding auction of item no. (i) property mentioned above.

12. The borrowers filed IA. No. 2 of 2000 therein objecting to the sale of item no. (i) above on the ground that the sale officer was not selling the whole property. It was disposed of on 29.06.2000. The Sale officer reported that he tried to put the property in public auction as per guidelines given by the Tribunal but no bidders had come forward to purchase the property; that the bidders requested him to reduce the upset price to Rs. 1.10 crores as against Rs. 1.40 crores; that the Sale officer could not reduce the value of the entire building as it was fixed by the Court Commissioner; that the auction was conducted as per directions of the Tribunal; and that no bidder came forward and so it failed.

13. On the basis of the report of the Sale officer, the Bank filed IA. No. 890 of 2000 before the Tribunal praying that the Tribunal permit reduction of the upset price at least by 40%. By order dt. 31.01.2000 the said application was dismissed by the Tribunal.

14. EP. No. s 349/1997-A, 350/1997-A and 351/1997-A were filed by the Bank to sell the shops mentioned in item no. (ii) above

15. WP. Nos. 19598 of 2001, 19616 of 2001 and 19655 of 2001 were filed in this; Court by the borrowers to declare the action of the sale officer in not permitting them to sell the property mentioned in the schedule in EP. Nos. 349, 350 and 351/1997-A (i.e., item No. (ii) mentioned above), part of house bearing No. 1-7-390, Bakaram, Hyderabad (i.e., item No. (i) mentioned above) and in not conducting the sale as per the guidelines issued by the Tribunal in its order

dt. 07.04.1999 in IA. No. 123 of 1999 in CTA. No. 249 of 1997 as illegal, arbitrary and violative of Rule 52 of the A.P. Cooperative Societies Rules, 1964 and to direct the Sale officer to permit the borrowers to sell both the properties and to appropriate the sale proceeds to the decretal amount.

16. By order dt. 04.04.2003 the writ petitions were disposed of on an undertaking given by the Bank that the auction would be conducted strictly in accordance with the guidelines framed by the Tribunal and no further orders need be passed. The Court observed:

this Court is of the strong view that the petitioner is causing hindrance in conducting public auction by the bank... permission is hereby accorded to the bank to proceed with the public auction and complete entire exercise of the same within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner is desirous of participating in the public auction, there cannot be any objection for the bank and equally if the petitioner is desirous of getting any bidders, who can pay more amount by participating in the public auction. The bank cannot have any objection. It is also made clear that the petitioner is at liberty to negotiate with the bank for "One Time Settlement" and such proposal if any is forthcoming, the bank is at liberty to consider the same

17. Subsequently, on 29.07.2003 Item (ii) was again sought to be auctioned but the said auction also failed. In the said auction", fifteen bidders participated. Notices dt. 09.10.2006 in Form-8 for sale of item (ii) were forwarded by the Sale officer to the MRO, Musheerabad, the District Cooperative Officer, Hyderabad and also to the Office of the Sub-Registrar, Musheerabad, Hyderabad. The said notices were also served on the borrowers on 10.10.2006. Notices in Form-9 were also served on the MRO, Musheerabad, the Sub-Registrar, Musheerabad, Hyderabad, and on the borrowers on 10.10.2006. Advertisements for public auction of item (ii) were published on 11.11.2006 in Eenadu and Hindu Newspapers. Pamphlets were also distributed about the proposed auction along with the newspapers Hindu and Eenadu and pamphlets containing the computerized text of the sale in brief were also affixed on twenty-one shops forming part of item no. (ii) mortgaged property so that people visiting those shops for purchase of articles would come to know of the sale.

18. On 21.11.2006, the auction of item (ii) of the mortgaged property i.e., premises bearing house Nos. 1-7-392/1 to 1-7-392/21, Bakaram, Musheerabad, Hyderabad, was held by the Sale officer of the Bank.

19. The petitioner in WP. No. 11862 of 2008 authorised (vide an authorisation letter (dt. 21.11.2006) one Damodar Kasat to participate in the said auction and to bid for the shop premises No. 1-7-392/1, Bakaram, Musheerabad, Hyderabad [forming part of item (ii) mortgaged property]. The petitioners' representative quoted Rs. 5 lakhs and the said bid was accepted by the Sale officer. The amount was deposited in two instalments i.e., Rs. 75,000/- on 21.11.2006 and Rs.

4,25,000/- on 04.12.2006. On 15.12.2006, Rs. 27,000/- towards the expenses for registration were also deposited.

20. On the same day, in respect of premises bearing No. 1-7-392/19, [forming part of item (ii)], petitioner in WP. No. 13872 of 2008 submitted her bid for Rs. 5 lakhs. The said bid was also accepted and she paid Rs. 75,000/- on 21.11.2006 and Rs. 4,25,000/- on 27.11.2006. She also deposited Rs. 27,500/- on 15.12.2006 towards the expenses for registration.

21. The petitioner in WP. No. 13882 of 2008 submitted his bid in respect of premises No. 1-7-392/20 [forming part of item (ii)] for Rs. 5,10,000/-. The said bid was accepted by the Sale officer and he paid Rs. 90,000 on 21.11.2006, Rs. 4,20,000/- on 27.11.2006 and deposited a sum of Rs. 28,050/- towards expenses for registration on 05.12.2000.

22. The borrowers participated in the said auction under protest and contended that the sale was not being conducted in accordance with the guidelines framed by the Co-operative Tribunal in CTA. No. 249 of 1997 referred to above. They filed the following objections under Rule-52 (21) (a) of the Act:

It is submitted that the Dy. Registrar-cum-Officer on Special Duty has conducted auction of 3 mulgies bearing Mulgi Nos. 1, 18 and 20 in House No. 1-7-392/1 to 1-7-392/21 on 21st November 2006. Prior to that the sale notice was served on the Judgment Debtor about the proposed sale. The Judgment Debtor has submitted the objections to the Sale Notice on 08.11.2006. The Sale Officer without considering the objections raised by the Judgment Debtor has conducted the sale on 21.11.2006 subject to confirmation.

1. The Judgment Debtor submits the following objections for the sale conducted by the Sale Officer.

2. In the Sale Notice referred to above, the Sale Officer proposed to auction all the mulgies bearing Door Nos. 1-7-392/1 to 1-7-392/22 admeasuring 335.33 x 3 Sq. yards situated at Bakaram, Musheerabad. Hyderabad.

3. In this regard, it is submitted that previously the Sale Officer has conducted sale of certain properties belonging to the J. Dr. on 02.03.2006 at 3.00 P.M. We filed objections before the sale officer at that time wherein it is said that the Sale Officer has to conduct the auction strictly as per the Guidelines by the Cooperative Tribunal in I.A. No. 123/1999 in CTA No. 249 of 1997 dated 7.4.1999. In spite of our objections, the Sale Officer conducted the auction and issued the proposed sale notice in violation of the guidelines. It is submitted that the Honourable High Court in W.P. No. 19598 of 2001 specifically directed to auction the property in accordance with the guidelines issued by the Cooperative Tribunal.

4. It is submitted that the Sale officer is not authorized to sell the 22 mulgies bearing H. Nos. 1-7-392/1 to 1-7-392/22. This J. Dr. at the time of borrowing the loan has created a mortgage of the mulgies bearing Nos. 1-7-392/1 to 1-7-392/7

only along with the other properties. Therefore the mulgies bearing H. Nos. other than 1-7-392/1 to 1-7-392/7 are not the properties that are covered by the Decree passed by the Tribunal against this J. Dr. Therefore, the Sale notice is defective and no sale can be conducted on such defective sale notice.

5. It is submitted that the procedure folio-wed by the authority is in contravention of guidelines issued by the Tribunal and High Court Order. The proclamation of sale was also not published in local news papers and not followed the procedure under Order 21 of C.P.C.

6. It is submitted that while disposing the above Writ Petitioners, the Hon"ble High Court directed the authority to sell the property within (8) weeks. Thereafter the Bank has obtained extension of time on several occasions, but their efforts became futile in auction of the property. It is submitted that the bank has obtained extension of time in W.P. No. 19616/2001, but the Bank has not obtained any extension order in other two cases. It is submitted that as per my knowledge there are no orders from the Hon "ble High Court for extension of time for auction of entire property. When the Judgments Debtor requested the copies of the order, the Bank refused to serve the same. It is submitted that the copies of Order along with publication may be supplied to Judgment Debtors and the Judgment Debtor is ready to pay necessary charges.

7. It is submitted that sale notice issued by the Sale Officer is defective as it does not contain the value of the property and upset price fixed for conducting the auction. Without there being the value of the property, the sale notice issued by Sale Officer is not valid in the eye of law.

8. The auction conducted by the Sale Officer is vitiated as they are contrary to the guidelines issued by the Cooperative Tribunal in I.A. No. 123 of 1999 in CTA No. 249/1997 dated 07.04.1999. In the said guidelines the Cooperative Tribunal has directed that the Ground Floor portion has to be auctioned first and if the sale price realized from the said auction is not sufficient, the two flats in the first floor have to be auctioned. There is no direction by the Cooperative Tribunal to auction the mulgies. The mulgies do not form part of the Ground Floor property which was directed to be auction by the Cooperative Tribunal. Therefore, the auction of the mulgies is contrary to the directives issued by the Cooperative Tribunal.

9. The Cooperative Tribunal has permitted the Sale Officer to reduce the upset price by 10% only, if no bidders are forthcoming to participate in the auction at the upset price fixed by the Sale Officer. In this case, the Sale Officer did not fix the upset price.

10. In the pamphlet issued by the Sale Officer for conducting the auction, Clause 2 states that upset price will be fixed for the above mentioned properties and will be announced on the date of auction. This is quite illegal. In the sale notice and in the proclamation issued by the Sale Officer, the upset price has to be mentioned. The sale is vitiated by non-mentioning of the upset price in the

proclamation.

11. No opportunity was given by the Sale Officer to the Judgment Debtor to mention their values in the proclamation. This is another infirmity which vitiates the auction.

12. At the time of conducting the auction, initially the Sale Officer fixed the upset price at Rs. 1 Lakh which does not reflect the market value of the property. The mulgies are situated in a busy commercial area on the main road of Musheerabad. There are several commercial establishments all around the schedule property. The market value fixed by the Government in that area is Rs. 20,000/- per Sq. yard. The Sale officer allowed the auction to start at Rs. 1 Lakh and allowed the bidders to raise their bids as per their choice. No uniform procedure is followed by the Sale Officer in conducting the auction.

13. The way in which the auction conducted, the mulgies were knocked down at throw away prices, thereby injustice and monetary loss is caused to the Judgment Debtor.

14. The Sale Officer did not give any wide publicity about the sale. He did not publish the proclamation in widely circulated newspapers which is contrary to the guidelines issued by the Cooperative Tribunal. The Tribunal in its guidelines directed the Sale Officer to publish the sale notice in two daily newspapers, one in English and other in Regional language. Because of not giving wide publicity the genuine interested bidders did not know about the auction. The bidders that participated in the auction are set up by the Decree Holder.

15. Even in the Writ petitions filed before the High Court the Decree Holder has stated before the High Court that the auction will be conducted in accordance with the guidelines issued by the Cooperative Tribunal. The auction is quite contrary to the guidelines issued by the Cooperative Tribunal and as such the sale is vitiated.

16. The Sale Officer has acted as per the directions of the Decree Holder and the auction is not impartial. The Decree Holder has taken active role in the auction.

17. In the affidavit filed in W.P.M.P. No. 10296 of 2004 in W.P. No. 19655 of 2001 the Decree Holder has admitted to auction the Ground Floor of the property first and if the amount is not realized by auctioning the Ground Floor, then he will auction Flats No. 2 and 3 on first floor as per Commissioner's Report. Even by that auction of the two flats in the first floor if the amount realized is not sufficient to satisfy the decree they will approach the Cooperative Tribunal for realizing the balance amount. Contrary to the affidavit filed in the High Court, the sale is being conducted of the mulgies in the Ground Floor and this is contrary to the directives issued by the Cooperative Tribunal.

23. By order dt. 15.12.2006 these objections were rejected by the Dy. Registrar of Co-operative Societies/OSD the Vasavi Co-operative Urban Bank Ltd. (for short, "the Deputy Registrar"). He held:

(i) that the subject matter of CTA. No. 249 of 1997 and WP. No. 24575 of 2007 is only the property bearing No. 1-7-390 [item no. (i)] and not the shops bearing Nos. 1-7-392/1, 392/19 and 392/21 [forming part of item no. (ii)]; and therefore, the guidelines given by the Tribunal in the above proceedings do not apply to the present auction which is in respect of a different property; the procedure adopted for auctioning the sale of the shops is in consonance with the broader principle stipulated in the order in CTA. No. 249 of 1997 by the Tribunal; and there is no violation in respect of procedure;

(ii) that the sale notice was published in two leading dailies, i.e., Hindu and Eenadu in English and Telugu which have wide circulation; pamphlets containing the details of sale notices were distributed widely keeping one piece of pamphlet in every newspaper that was intended for distribution for readers of Hindu and Eenadu newspapers; pamphlets containing computerized text of the sale in brief were affixed on twenty-one shops for peoples' convenience;

(iii) that sale notice in Form-8 and 9 was served on 10.10.2006 on the borrowers well-in-advance prior to the date of sale;

(iv) that the three judgment debtors are the guarantors to one another duly offering their property as equitable/simple mortgage and in view of this, three E.Ps were filed against them and all properties were put to auction. So objection as to ownership of property is not worth considering.

(v) that twenty-two shops in premises No. 1-7-392/1 to 1-7-392/22 have been valued by a draft valuer and the values have been arrived at taking into consideration the date of construction, depreciation and the then stage of the building; such valuation certificates cannot be questioned simply by taking the value of the land prevailing in the particular area; value of the land on which the structure exists was taken into consideration at the Government rate; presumptive and illusory facts cannot be taken into account in arriving at the value of the property; if the value of the property was as high as is alleged by the borrowers, they could have sold the property on their own accord with the prior permission of the mortgagor and liquidated the dues to the Bank; and therefore, their allegation that the property was sold at a throw-away price cannot be countenanced and is one made only to stop the sale.

(vi) there were a good number of bidders who participated in the public auction. Although no bidder came forward to bid for the shops notified when the bids started, when the upset price was reduced to Rs. 1 lakh for each shop, bidding commenced; merely because the auction commenced from Rs. 1 lakh, it did not materially affect the realisation of reasonable price for each shop; shop Nos. 1, 19 and 20 alone, out of twenty-one shops put to auction, came to be sold for Rs. 5,00,000/- and Rs. 5,10,000/-; some bidders wanted to buy the entire twenty-one shops at Rs. 25 lakhs or Rs. 30 lakhs but none of them were willing to offer beyond Rs. 30 lakhs; considering the fact that the buildings were growing older and the interest component of the amounts due by the borrowers would continue

to increase with passage of time, that several previous auctions had failed, it was felt that if these bids were again cancelled, it may be difficult to obtain better price again, and so the sales were confirmed.

24. Aggrieved thereby, the borrowers filed WP. No. 26511 of 2006 in this Court. The writ petition was disposed of on 01.03.2007 directing the borrowers to work out their remedies by way of an appeal u/s 76 of the Act.

25. Challenging the order dt. 21.12.2006 passed by the Dy. Registrar in EP. Nos. 349, 350 and 351 of 1997 in respect of the property bearing No. 1-7-392/1, 1-7-392/19 and 1-7-392/20 [forming part of item no. (ii)], the borrowers filed CTA. Nos. 142 of 2007, 143 of 2007 and 144 of 2007, respectively.

26. By separate orders dt. 18.04.2008, the Tribunal allowed the said appeals holding that the guidelines framed by it in its order dt. 07.04.1999 in IA. No. 123 of 1999 in CTA. No. 249 of 1997 were not followed; that the sale officer has not conducted the sale in accordance with Rule 52(11) of the Rules by indicating that the said properties were free from encumbrance; that the decree-holder did not file encumbrance certificate for twelve years along with the execution petition as contemplated under Rule 52(11)(f) or at least before issuing sale notices under Form Nos. 8 and 9; that there is no evidence that proclamation of sale under Form Nos. 8 and 9 dt. 09.10.2006 fixing the date of sale on 21.11.2006 were published by affixing a note at the Office of Registrar of the District and Taluq Office (MRO Office of the area concerned) thirty days before the date fixed for sale and also by beat of drum in the village on two consecutive days previous to the date of sale or on the date of sale as contemplated under Rule 52(11)(e) of the rules; there is no evidence that sale notice under Form Nos. 8 and 9 were duly published in the newspapers having wide circulation in the area or that pamphlets were distributed in the area notifying the sale on 21.11.2006; although the names of the petitioners in WP. No. 13872 of 2008 and WP. No. 13882 of 2008 were found in the proceedings of the sale officer dt. 21.11.2006, the name of the petitioner in WP. No. 11862 of 2008 is not to be seen in the auction proceeding of the sale officer. It is not mentioned that the petitioner in WP. No. 11862 of 2008 was the highest bidder in respect of shop No. 1 for Rs. 5,00,000/- and that the petitioner in respect of shop Nos. 19 and 20 became the highest bidders for Rs. 5 lakhs and Rs. 5.10 lakhs; the sale officer had not recorded various stages of the auction proceedings; there are no detailed sale proceedings/reports containing the various stages of bidding made by each and every bidder; there is no record to show that the petitioner in WP. No. 11862 of 2008 participated in the auction and was declared the highest bidder in respect of shop No. 1; the sale officer left the choice to bidders and commenced bidding as per their will and it is sufficient to set aside the sale; when bidders did not come forward to bid the amount over and above the upset price, the Sale officer could have reduced the upset price only by 10% as per the guidelines issued by the Tribunal and he should have tried to secure more amount in the public auction; the endeavour of the Sale officer should be to get the entire loan

amount through the sale of the mortgaged property as the borrowers have no other property except the mortgaged properties; if the properties are sold at throw-away price ultimately, it is the Bank and its depositors who would suffer; that the Sale officer should have been more diligent in conducting the sale and there is absolutely no urgency for him to sell the property below the upset price violating the guidelines issued by the Tribunal. It also held that the Dy. Registrar confirmed the sale on the basis of a report of the sale officer on deputation in the said Bank and there was no evidence that the auction purchasers paid the amount required towards stamp fee for certificate under Clause. 5 sub-Rule-14 within fifteen days from the date of the sale as contemplated by Rule-52(11)(h) of the Rules framed under the Act; there is no material before the Dy. Registrar to confirm the sale on 21.12.2006 that the auction purchasers had deposited with the sale officer the balance 85% purchase money and the amount towards purchase of stamps for drafting the sale certificates as contemplated under Rule 52(11)(h) of the Rules; and therefore, the order dt. 21.12.2006, passed by the Dy. Registrar is liable to be set aside.

27. Aggrieved by the order dt. 18.04.2008 in CTA. No. 142 of 2007 in respect of the property bearing No. 1-7-392/1, Bakaram, Musheerabad, Hyderabad, it's auction purchaser filed WP. No. 1 1862 of 2008.

28. Likewise, aggrieved by the order dt. 18.04.2008 in. CTA. No. 143 of 2007 in respect of property bearing No. 1-7-392/20, Bakaram, Musheerabad, Hyderabad, it's auction purchaser filed WP. No. 13872 of 2008.

29. Similarly, aggrieved by the order dt. 18.04.2008 in CTA. No. 144 of 2007 in respect of property bearing No. 1-7-392/19, Bakaram, Musheerabad, Hyderabad, the auction purchaser filed WP. No. 13882 of 2008.

30. After the orders were passed on 18.4.2007 in CTA. No. 142 of 2007, CTA. No. 143 of 2007 and CTA. No. 144 of 2007, the Sale officer sought to conduct auction of the premises bearing Nos. 1-7-392/1 to 1-7-392/22 excluding Shop Nos. 1, 2, 3, 6, 9, 19 and 20, to realise the balance amounts due in the E.P. Nos. 349/1997A, 350/1997A and 351/1997A. This is challenged by the borrowers in WP. No. 16650 of 2011.

31. Heard Sri S. Sridhar, learned counsel for the petitioner in W.P. No. 11862 of 2008; Sri Vijay Kumar Heroor, learned counsel for the petitioners in W.P. Nos. 13872 and 13882 of 2008 (counsel for the auction purchasers); Sri N.V. Anantha Krishna, learned counsel for the petitioners in W.P. No. 16650 of 2011 (counsel for the borrowers); Sri P.B. Vijay Kumar, learned counsel for the Bank; and learned Government Pleader for Cooperation for official respondents.

32. Learned counsel for the borrowers contended that the Deputy Registrar in his order dt. 15.12.2006 failed to follow guidelines laid down in I.A. No. 123 of 1999 in CTA No. 149/1997 dt. 7.4.1999; the impugned orders in CTA Nos. 142/2007, 143 of 2007 and 144 of 2007 passed by Tribunal on 18.4.2008 set out the illegalities committed by in conduct and confirmation of sale of the properties

bearing Shops Nos. 1-7-392/1, 1-7-392/19 and 1-7-392/20, Bakaram, Hyderabad; the Deputy Registrar has been notifying the auction periodically and conveniently selling part of the property at his whims for throw-away prices to the detriment of the borrowers and also inflating the outstandings; that he did not furnish the details of outstandings and did not take suitable measures to sell the property in time despite borrowers' unconditional acceptance for the sale in 1997; the Bank has not explained as to why it has not executed the Award passed on 27.2.1997 in ARC No. 411/96-J.1, ARC No. 410/96-J.1, ARC No. 412/96-J.1; that under Article 136 of the Limitation Act, 1963 the time limit for execution of any decree or order of civil Court is 12 years; therefore the awards of arbitrator/decrees ought to have been executed on or before 27.02.2009; thereafter the Awards dt. 27.2.1997 passed in ARC Nos. 410/96-J.1, 411/96-J.1, 412/96-J.1 became incapable of execution and got barred by limitation; once auction was conducted in E.P. Nos. 349/1997A, 350/1997A and 351/1997A, the said E.Ps ought to have been terminated; the Bank had not sought permission for extension of time for further sales; therefore the Bank ought to have filed fresh execution petitions for bringing out unsold properties to sale and could not have been allowed to continue the same E.Ps.; that although the above properties are located in a very prime locality in Bakaram, Musheerabad main road, are commercial in nature and there would not be any problem in selling them, the Bank is not interested in selling them but only interested to inflate the outstandings; the auction notices dt. 17.5.2011 issued by the Deputy Registrar of Cooperative Societies in E.P. Nos. 349/1997A, 350/1997A and 351/1997A are without authority of law and are violative of fundamental rights guaranteed to borrowers under Part-III of the Constitution of India; so the orders dt. 21.12.2006 passed by the Deputy Registrar confirming sale in respect of the properties bearing Nos. 1-7-392/1, 1-7-392/19 and 1-7-392/20, Bakaram, Musheerabad, Hyderabad in E.P. Nos. 349/1997A, 350/1997A and 351/1997A was rightly set aside by the Tribunal in its orders dt. 18.4.2008 passed in CTA Nos. 142, 143 and 144 of 2007; that the same are not liable to be interfered with by this Court; and consequently the auction notices dt. 17.5.2011 issued by the Deputy Registrar in EP Nos. 349/1997A, 350/1997A and 351/1997A are liable to be quashed.

33. Learned counsel for the Bank submitted that the contentions raised by the borrowers are not tenable. He contended that item no. (i) i.e., property bearing House No. 1-7-390, Bakaram, Musheerabad, Hyderabad could not be sold even after ten attempts; on 21.11.2006 the Bank conducted public auction and sold part of item no. (ii) i.e., the premises bearing nos. 1-7-392/1 to 1-7-392/22 situated at Bakaram, Musheerabad, Hyderabad (3 shops out of 22 shops); the sale proceedings amounting to Rs. 47,94,000/- were adjusted towards dues under the Awards dt. 27.2.1997 in ARC Nos. 410/1996-J.1, 411/1996-J.1, 412/1996-J.1; even after the adjustment of the above amounts, outstanding amounts due in the three loan accounts is to the tune of Rs. 1,83,37,009.25 ps. as on 31.12.2009; the borrowers had always stalled the auction and ensured

that from 1997 till 2011 no amount could be recovered from them; the guidelines laid down in the order dt. 7.4.1999 in I.A. No. 123/1999 in CTA No. 249/1997 apply only to item no. (i) i.e., the property bearing No. 1-7-390, Bakaram, Hyderabad; borrowers are trying to mislead this Court by contending that the said guidelines also apply to the sale of the properties covered by item no. (ii), i.e., premises no. 1-7-392/1 to 1-7-393/22 (shops), Bakaram, Musheerabad, Hyderabad; the Deputy Registrar had rightly rejected the objections raised by the borrowers; that under proviso to Rule 52(14) of the Rules framed under the Act, no sale can be set aside on the ground of irregularity, mistake or fraud unless the Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake and fraud; although the borrowers have claimed that the market value fixed by the Government in Bakaram area is Rs. 20,000/- per sq. yd, no material has been placed by them before the Deputy Registrar of Cooperative Societies to prove the said fact; as noted by the Deputy Registrar, 15 bidders have participated in the auction held on 21.11.2006 in respect of the shops i.e. 1-7-392/1 to 1-7-392/22, Bakaram, Musheerabad, Hyderabad, sale notice was published in leading news papers "The Hindu" and "Eenadu" which have very large circulation in the area, pamphlets containing the details of sale notice were also distributed keeping one in every newspaper, newspaper pamphlets containing the computer text of sale were affixed on 21 shops and wide publicity for sale was given; the sale notice in Form-8 and 9 were also served on 10.10.2006 on the borrowers; they were also forwarded to the Mandal Revenue Officer, Musheerabad, to the office of the Sub Registrar, Musheerabad on 10.10.2006; the Sale officer accepted the highest bids made by the petitioners in Writ Petition No. 11862 of 2008, 13872 of 2008 and 13882 of 2008 rightly and submitted proposals to the Deputy Registrar for confirmation; if this auction is cancelled, there is no guarantee that a fresh auction would fetch a better value in future; the borrowers had ample opportunity to procure bidders but they did not get any bidder; without any substantial injury being caused to the borrowers, the Tribunal under an erroneous impression that the guidelines given by it in its order dt. 7.4.1999 in I.A. No. 123 of 1999 in CTA No. 247 of 1997 apply also in respect of item no. (ii) misdirected itself and set aside their sale confirmed by the Deputy Registrar of Co-operative Societies; that the contention of the borrowers that the execution petition could not be continued beyond 12 years is without any basis as period of limitation prescribed under Article 136 of the Limitation Act, 1963 is only for filing of the execution petition within the period of 12 years; there is no requirement of law that the execution petition should terminate on the expiry of 12 years period without the decree/award being satisfied; there is absolutely no basis for the contention of the borrowers that the fresh execution petition should have been filed by the Bank after expiry of 12 years from 1997 i.e., in 2009; as long as the awards against borrowers are not satisfied and full satisfaction is not recorded or Bank has not withdrawn the execution petitions, the same E.P. can be pursued by the Bank to conduct auctions of the mortgaged properties; the Bank and its depositors would suffer irreparable loss and injury if the sale in

favour of petitioners in Writ Petition Nos. 11862, 13872 and 13882 of 2008 of shop nos. 1-7-392/1, 1-7-393/20 and 1-7-392/19, Bakaram, Musheerabad, Hyderabad are set aside; the auction notice dt. 17.5.2011 issued by the Deputy Registrar of Cooperative Societies in E.P. Nos. 349/1997A, 350/1997A and 351/1997A are perfectly valid and do not suffer from any irregularity or illegality; and therefore the Writ Petition Nos. 11862, 13872 and 13882 of 2008 be allowed and the Writ Petition No. 16650 of 2011 filed by the borrowers be dismissed.

34. Learned counsel for the petitioner in Writ Petition No. 11862 of 2008 has adopted the submissions of the learned counsel for the Bank and contended that the petitioner in Writ Petition No. 11862 of 2009 had given an authorisation letter dt. 21.11.2006 authorising one Damodar Kasat to represent him in the auction held on 21.11.2006 in respect of shop no. 1 bearing Municipal No. 1-7-392/1; the sale officer had conducted the auction in accordance with Rule 52 of the Rules made under the Act; shop no. 1-7-392/1 was rightly sold to him and he had paid Rs. 75,000/- on 21.11.2006 and Rs. 4,25,000/- on 4.12.2006 towards the bid amount of Rs. 5,00,000/- collected by him and he had also deposited Rs. 27,500/- towards expenses for stamp duty and registration on 15.12.2006 with the Sale officer; that the findings of the Tribunal that everything was prepared behind the screen and clandestinely executed with collusion is baseless; the Tribunal appears to have approached the matter with pre-determined mind and has improperly appreciated the evidence on record; and therefore the order dt. 18.4.2008 passed by the Tribunal in CTA No. 142 of 2007 be quashed.

35. Learned counsel for the petitioners in Writ Petition Nos. 13872 of 2008 and 13882 of 2008 has also adopted the submissions of the learned counsel for the Bank and of counsel for the petitioner in Writ Petition No. 11862 of 2008. He further contended that although the Bank had tried to sell the properties more than 10 times between 6.8.1997 and 2.3.2006 by publishing auction notifications in the newspapers, distribution of pamphlets etc., it was unsuccessful because of the hurdles created by the borrowers; the Deputy Registrar of Co-operative Societies has rightly rejected the objections filed by the borrowers in his order dt. 15.12.2006; and therefore the orders passed by the Tribunal in the CTAs be set aside.

36. Learned counsel for the Bank and the auction purchasers relied upon the decisions in G. Venkata Reddy Vs. B. Venkata Reddy and N. Chinnappa Reddy, Saheb Khan Vs. Mohd. Yusufuddin and Others, Kadiyala Rama Rao Vs. Gutala Kahna Rao (Dead) By Lrs. and Others, , and Saheb Khan Vs. Mohd. Yusufuddin and Others, in support of their contentions.

37. I have noted the contentions of the respective parties.

38. There is no dispute that the borrowers and their mother had borrowed in the year 1993 term loans of Rs. 11,50,000/-, in all Rs. 34,50,000/- (Term Loan Account Nos. 540, 541 and 542) for the purpose of construction of flats and they deposited title deeds pertaining to the following two properties by creating

simple mortgage in favour of the Bank towards security for the above loan: (i) House No. 1-7-390, admeasuring 1186 Sq. yds., abutting Golconda "X" Roads, Bakaram, Musheerabad, Hyderabad; and (ii) twenty-two shops bearing Nos. 1-7-392/1 to 1-7-392/22, situated at Bakaram, Musheerabad, Hyderabad. When the borrowers committed default in repayment of the loan amounts, the Bank filed arbitration cases vide ARC. Nos. 410/96.J1, 412/96.J1 and 411/96.J1, against the borrowers for recovery of the amounts due. On 27.02.1997, the ARC's were allowed by the arbitrator fixing liability of Rs. 15,28,212/- with interest on each of the borrowers.

39. The question which requires to be decided in these writ petitions is whether the Deputy registrar of Co-operative Societies acted properly in confirming the sale of 3 shops in favour of the petitioners in W.P. 11862/2008, 13872/2008 and 13882/2008.

40. Proviso to Rule 52(14) of the Andhra Pradesh Co-operative Societies Rules, 1964, states:

No sale shall be set aside on the ground of irregularity, mistake or fraud unless the Registrar is satisfied on the ground that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

This proviso is in pari materia with sub-Section (2) of Order XXI Rule 90 C.P.C.

41. The Supreme Court had occasion to interpret sub-Section (2) of Order XXI Rule 90 C.P.C. in *Kadiala Ramarao* (3 supra) and *Saheb Khan* (4 supra). In these decisions the Supreme Court held that for a sale can be set aside, mere establishment of a material irregularity or fraud will not do and that the applicant must go further and establish to the satisfaction of the Court that the material irregularity or fraud has resulted in substantial injury to the applicant. It held that even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set aside the sale unless substantial injury has been occasioned by the material irregularity or fraud in publishing or conducting the sale. It also reiterated that a charge of fraud or material irregularity must be specifically made with sufficient particulars, that bald allegations would not do and facts must be established which would reasonably sustain such a charge. It also held that giving wide publicity does not necessarily mean publication in newspapers only and that if pamphlets are distributed advertising sale in the locality prior to holding of the sale and copy of sale notice is affixed on the property, it would be adequate.

42. A reading of the objections filed by the borrowers before the Dy. Registrar of Co-operative Societies under Rule 52(21)(A) of the Rules nowhere shows that the borrowers have alleged that they suffered substantial injury by reason of material irregularity, fraud or mistake in the conduct of the sale. In the absence of such a contention raised by the borrowers in their objections, the Deputy Registrar was entitled to reject their objections. It is pertinent to note that the tribunal nowhere even referred to the proviso to sub-Rule (14) of Rule 52.

43. The borrowers' main contention is that the guidelines dt. 07.04.1999 of the Tribunal in IA. No. 123 of 1999 in CTA. No. 249 of 2007 were not complied with by the Sale Officer. Admittedly, the subject matter of CTA. No. 249 of 2007 was only item no. (i) mentioned above and the shops which were subject matter of item No. (ii) were not the subject matter of CTA. No. 249 of 1997. The Dy. Registrar of Co-operative Societies in his order dt. 15.12.2006 rejected the objections on this count on the above basis specifically. But the Tribunal without appreciating the fact that it's guidelines in CTA. No. 249 of 2007 relate to item No. (i) mentioned above and not to item No. (ii), clearly misdirected itself and came to the conclusion that the Bank/Sale Officer has not followed the said guidelines. It found fault with the Bank in reducing the upset price of Rs. 5,00,000/- for each shop to Rs. 1,00,000/- for each shop on the ground that guideline No. 2 therein laid down permitted reduction in upset price by only 10% of the value fixed. In view of the fact that the said guidelines have no application to item (ii) property, it cannot be said that there is any violation of the said guidelines in reducing the upset price from Rs. 5,00,000/- per shop to Rs. 1,00,000/- per shop.

44. The counsel for the borrowers sought to contend that the Bank had agreed to follow the guidelines in WP. No. 19598 of 2001, WP. No. 19616 of 2001 and WP. No. 19655 of 2001 and that both item Nos. (i) and (ii) are subject matter of the said writ petitions and statement by the counsel for the Bank recorded in the said case would make the guidelines applicable to item No. (ii) also. This contention is not tenable as explained below. In the above writ petitions, the borrowers had sought a declaration that the action of the Dy. Registrar in not permitting them to sell both items and in not conducting the sale as per the guidelines issued by the Tribunal in CTA 249/1997 is illegal, arbitrary and violative of the Rule 52 of the Rules. In that context an observation was made that the counsel for the Bank assures that public auction would be conducted in accordance with the guidelines framed by the Tribunal. The statement of the counsel for the Bank would have to be construed as applicable only in respect of item No. (i) in respect of which such guidelines were issued by tribunal and cannot be twisted out of context and made applicable to the sale of the shops in item No. (ii) as is sought to be done by the borrowers.

45. In Cholan Roadways Limited Vs. G. Thirugnanasambandam, , the Supreme Court held:

In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed

to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

46. Non-consideration by the Tribunal of Proviso to Rule 52 (14) and non-application of mind to the question that it's guidelines in CTA No. 249/1997 do not relate to item no. (ii), have resulted in the tribunal misdirecting itself and vitiated it's orders. Thus there is a clear error apparent on face of record warranting interference by this Court with it's orders.

47. The counsel for the borrowers placed reliance on Section 72 of the Act and contended that as the Registrar is a Civil Court for the purposes of Article 182 of the First Schedule to the Indian Limitation At, 1908 (which corresponds to Article 136 of the Limitation Act, 1963), the Bank cannot be allowed to continue with the EPs beyond the period of twelve years from 27.02.1997 when awards in ARC. Nos. 410/96.J1, 412/96.J1 and 411/96.J1 were passed. This contention is without any basis. Merely because the execution proceedings remained pending for more than twelve years, the borrowers cannot say that Article 182 would apply and the execution of the awards/decrees would be barred. The borrowers seem to be under a misconception that once the period of twelve years lapses from the commencement of the execution proceedings, and the awards/decrees remain unsatisfied, the decree-holder/Bank cannot continue the execution petitions. No authority is placed by the counsel for the borrowers in support of the said contention. In my view, Art. 136 prescribes the period of limitation for filing execution proceedings to execute a decree obtained by a party. It mandates that normally execution proceedings for executing decrees ought to be commenced within 12 years from the date when the decree becomes enforceable. It cannot be interpreted to mean that even if such execution proceedings were filed within 12 years from the decree, they would terminate if the decree was not satisfied in 12 years from the date of decree.

48. Interpreting Article 136 of the Limitation Act in Deep Chand and Others Vs. Mohan Lal, the Supreme Court held:

5...A perusal of the article shows that the period of limitation prescribed by it starts to run from the date when the decree becomes enforceable provided the case does not fall within the scope of the latter part of the provision in the third column. Generally a decree or order becomes enforceable from its date, but in appropriate cases the court passing the decree may prescribe the time wherefrom the decree becomes enforceable on a future date. It must, however, be remembered that the purpose of an execution proceeding is to enable the decree-holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assists the decree-

holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree. the interpretation which assists the decree-holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree-holder to reap the fruits of his decree.

8...As a general rule the executing court should not find ways to dismiss the execution application as barred by time unless it is established, beyond doubt, that such an application was beyond limitation.

49. As the awards/decrees obtained by the Bank have not been discharged by the borrowers nor has the Bank at any stage withdrawn the EP's, the Bank is entitled to continue the execution proceedings filed by it till all dues under the awards obtained by it from the borrowers are recovered. It is not necessary for the Bank to file fresh execution petitions merely because it could not realize the amounts within 12 years from the date of such awards/decrees.

50. As regards the contention of the borrowers that the petitioner in WP. No. 11862 of 2008 had not participated in the auction at all, the contention found favour with the Tribunal. The counsel for the petitioner in WP. No. 11862 of 2008 placed on record the authorization letter dt. 21.11.2006 given by him to one Damodar Kasat to participate in the auction on his behalf. The proceedings of the auction recorded by the Sale Officer indicate that the said Damodar Kasat participated in the auction in respect of shop No. 1 (1-7-392/1). Unfortunately, the said authorization letter was probably not placed before the Tribunal by the Sale Officer and therefore, the Tribunal came to an opinion that he did not participate in the auction at all. It is pertinent to notice that this contention was not raised at all in the objections filed by the borrowers before the Dy. Registrar in EP. No. 351 of 1997-A, questioning the sale in respect of shop No. 1-7-392/1. It was, therefore, not open to the borrowers to raise the said plea before the Tribunal. In any event, no prejudice is caused to the borrowers if the said petitioner's representative, instead of the petitioner himself in person, participated in the auction and bid for the said shop.

51. In the objections filed by the borrowers it is alleged that the market value fixed by the Government is Rs. 20,000/- per Sq.yd. and that the property was sold in favour of the auction purchasers at throw-away price of Rs. 5 lakhs/Rs. 5.10 lakhs and the property would be worth more than Rs. 30 lakhs. No scrap of paper is placed before the Tribunal by the borrowers regarding the market value of the property on the date of the sale. In fact, no such material is placed even before this Court to come to the conclusion that the properties were sold at a throw-away price. Without any evidence being placed by the borrowers to

substantiate the said allegation, it is not possible to accept their contention that the properties would have fetched a very high value as on the date of sale. Assuming it to be so, nothing prevented the borrowers from fetching bidders to participate in the auction who would have quoted such high price. But they have not done so.

52. The Tribunal had held that the sale proclamation under Form-8 did not indicate that the property which was being sold was free from encumbrance, that encumbrance certificate for twelve years was not filed, that it was not proved that there was publication by affixing the notice in Form-9 in the Office of the Registrar of the District and Taluq Office of the area concerned thirty days before the date fixed for sale and that publicity by beat of drum in the village on two consecutive days previous to the date of sale and on the date of sale was not done. In fact, these contentions were not raised before the Deputy Registrar in the objections filed by borrowers. It was baldly stated in the objections that proclamation of sale was not published in the local newspapers, that procedure under Order XXI of CPC was not followed and that there was no proclamation in widely circulated newspapers. It appears that the Tribunal made out a new case for the borrowers in the appeal by going into aspects which were not even raised by the borrowers. Assuming for the sake of argument without admitting that they are true, at best these might be mere irregularities which even the borrowers did not claim in their objections to have resulted in substantial injury to them. As noted supra, there has been publication in newspapers viz., Hindu and Eenadu and copies of the publications were also filed in WP. No. 11862 of 2008 by the petitioner therein. The Tribunal without noticing this fact and giving undue importance to publication by torn by beat of drum came to erroneous conclusion that there was no adequate publicity for the conduct of the sale. In the facts and circumstances of these cases, I am satisfied that there was adequate publicity for the sale held on 21.11.2006 by the Sale officer. Some minor irregularities are highlighted by Tribunal and an erroneous conclusion is arrived at by it that the properties were sold at a throw-away price. It is stated by the Bank in its counter that after adjusting the amounts recovered in the auction, still an amount of Rs. 1,83,37,009.25 ps. is due as on 31.12.2009. The Bank cannot be expected to wait indefinitely to secure the maximum possible rate when the interest as per the award keeps mounting every day adding to the burden on the Bank, while the borrowers merrily thwart every attempt by the Bank to realise the amounts due to it. Admittedly, the borrowers even after lapse of fourteen years have not paid a single paisa to the Bank. The tactics adopted by the borrowers had also been criticised by this Court in its order dt. 04.04.2003 in WP. No. 19598 of 2001, WP. No. 19616 of 2001 and WP. No. 19655 of 2001 referred to above.

53. In Ritesh Tewari and Another Vs. State of U.P. and Others, the Supreme Court declared:

26. The power under Article 226 of the Constitution is discretionary and

supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any feller on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide *Champalal Binani v. CIT*; *Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance Co. Ltd.*; *LIC v. Asha Goel*; *Haryana Financial Corpn. v. Jagdamba Oil Mills*; *Chandra Singh v. State of Rajasthan* and *Punjab Roadways v. Punja Sahib Bus and Transport Co.*)

27. Where a party's claim is not founded on valid grounds, the party cannot claim equity. A party that claims equity must come before the court with clean hands as equities have to be properly worked out between parties to ensure that no one is allowed to have their pound of flesh vis-?-vis the others unjustly. (Vide *Sikkim Subba Associates v. State of Sikkim*)

28. In *A.P. State Financial Corpn. v. Gar Re-Rolling Mills* this Court observed: (SCC p. 662, para 18)

18.... Equity is always known to" defend the law from crafty evasions and new subtleties invented to evade law.

29. In *M.P. Mittal v. State of Haryana* this Court held: (SCC p. 374, para 5)

5.... it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.

54. In the facts and circumstances of the case, this court is of the view that the borrowers are bent upon thwarting the sale of mortgaged properties having agreed to let the Bank sell them and recover it's dues and have succeeded in doing so for more that 14 years. Their conduct is not bonafides and they are not entitled to relief under Art. 226 of Constitution of India.

55. Lastly, the counsel for the borrowers had contended that the failure to deposit the stamp duty amount within fifteen days from the date of sale of the property is a material irregularity in conducting the sale and therefore, the sale

ought to be set aside. This contention was not raised by the borrowers before the Dy. Registrar in the objections filed by them. Therefore it could not have entertained by it in the appeal. In spite of this, the Tribunal allowed them to raise the said issue and in para. 18 of its order and held that the sale was conducted on 21.11.2006 and the auction purchasers had not paid the stamp fee amounts within fifteen days as prescribed by Rule (52)(11)(h) of the Rules. In G. Venkata Reddy (1 supra), a learned Single Judge of this Court while considering the provisions of Order XXI Rule 85 and 90 of CPC, held that failure to deposit stamp duty amount within 15 days from sale of property did not constitute an irregularity in the conduct of a sale as the deposit of stamp duty is subsequent to conduct of sale. Therefore this finding of the Tribunal also cannot be sustained.

56. For the above reasons, WP. No. 11862 of 2008, WP. No. 13872 of 2008 and WP. No. 13882 of 2008 are allowed. No costs. In view of the fact that the EP's filed by the Bank did not terminate and can be continued, there is no impediment for the Bank to notify the properties which had not been sold on 21.11.2006 for sale by issuing notices dt. 17.05.2011 in Form -- 8. The borrowers have not established that the said notices of sale are contrary to law. Therefore, WP. No. 16650 of 2011 is dismissed. No costs.

That Rule Nisi has been made absolute as above witness the Hon''ble Sri Kalyan Jyoti Sengupta, the Chief Justice on this Tuesday, the Twenty third day of July, Two Thousand and Thirteen.