(2025) 07 KAR CK 0471

In the Karnataka High Court, Principal Bench

Case No : Writ Petition No. 20017 Of 2025 (GM-RES)

T A Leelavathi & Ors — APPELLANT

Vs

City Union Bank Ltd & Ors. — RESPONDENT

Date of Decision : 08-07-2025

Acts Referred:

Citation : (2025) 07 KAR CK 0471

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Ramachandra N.

Final Decision : Dismissed

Judgement

S Sunil Dutt Yadav, J

Learned counsel Sri Vignesh Shetty accepts notice for the respondents.

1. The petitioners have called in question the validity of the tender cum auction sale notice dated 13.06.2025.

2. The petitioners have raised various contentions including regarding under-valuation of the property.

3. Learned counsel for the respondent - Bank submits that the petitioners have not come with clean hands insofar as undertaking to clear the loan account dues made in W.P.No.8159/2023 has not been adhered to.

4. It is further submitted that the substantive remedy is under Section 17 of the SARFAESI Act as regards the impugned auction.

5. In light of the contentions raised it is relevant to take note of the observations of the Apex Court in the case of Union Bank of India v. Satyawati Tondon and Others - (2010) 8 SCC 110 that the appropriate remedy would be to relegate the petitioner to seek for substantive remedy before the Debt Recovery Tribunal. The relevant observations of the Apex Court are as follows:

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6. In light of the observations made by the Apex Court, it can be noticed that several factual contention raised by the petitioner are the matters that cannot be adjudicated in the present proceedings.

7. Accordingly, the petition is disposed off relegating the petitioners to avail of the substantive remedy as regards the impugned proceedings. All contentions of both the sides are kept open.

8. In light of disposal of writ petition, it is made clear that the auction stated to be held on 09.07.2025 is not stayed, however, in the event the auction is confirmed, no sale certificate to be issued for a period of three weeks.

9. The interim protection granted under this order is only to enable the petitioner to avail of his substantive remedy and must not be considered to be an order passed on the basis of adjudication on merits. Upon the lapse of the time stipulated, the protection granted would cease to operate and the authorities before whom petitioner may approach are to look at the matter afresh uninfluenced by the observations made herein.

10. Needless to state that while considering the aspect of limitation, in the event the proceedings are instituted before the DRT, time spent before this Court may be taken note of appropriately.

