

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD  
(Special Original Jurisdiction)**

FRIDAY, THE TWENTY NINTH DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**

**WRIT PETITION NO: 33517 OF 2024**

**Between:**

HDB Financial Services Limited, Having its Branch Office at. 1st Floor, D. No. 1-8-616/1, Shree Balaji PSR Tower, Begumpet, Prakash Nagar, Hyderabad - 500 016 Also at. 3rd and 4th Floor, Hemalatha Mansion, 7-1-397/111 and 112, SR Nagar, Hyderabad - 500 016 Represented by Authorised Signatory Sri. P. Krishna Pradeep, S/o. P. Venkata Subba Roa

**...PETITIONER**

**AND**

1. M/s. Sree Sree Srinivas Constructions, Represented by its Partner Katta Koteswar Rao, R/o. H. No. 8-2-676/1/D/12, Road No. 12, Sri Ram Nagar, Banjara Hills, Hyderabad - 500 034
2. Smt. Jayalaxmi Katta, W/o. Katta Koteswar Rao, Aged. Not known to the Petitioner, Occ. Business, R/o. H. No. 8-2-676/1/D/12, Road No. 12, Sri Ram Nagar, Banjara Hills, Hyderabad - 500 034
3. Mrs. Mateen Ansari, W/o. Mohd. Habeed Shams Ansari. Aged. Not known to the Petitioner, Occ. Not known to the Petitioner, R/o. 8-2-672, Road No. 13, Banjara Hills, Hyderabad - 500 034

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ order or direction more particularly a writ in the nature of a writ of certiorari calling for the records relating to and connected with Order passed by the Hon'ble Debts Recovery Tribunal - II, Hyderabad in I.A. No. 944 of 2022 in S.A.I.R. No. 1205 of 2022 dated 26.06.2024 as confirmed by the Hon'ble Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 99 of 2024 vide Order dated 04.09.2024 and quash or set aside the same by holding it as contrary to law.

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of Order passed by the Hon'ble Debts Recovery Tribunal - II, Hyderabad in I.A. No. 944 of 2022 in S.A.I.R. No. 1205 of 2022 dated 26.06.2024 as confirmed by the Hon'ble Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 99 of 2024 vide Order dated 04.09.2024.

**Counsel for the Petitioner: SRI P.S.RAJASEKHAR**

**Counsel for the Respondents: --**

**The Court made the following: ORDER**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

**WRIT PETITION No. 33517 of 2024**

**ORDER:** (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. P.S. Rajasekhar, learned counsel appears for the petitioner.

2. In this Writ Petition, the petitioner has assailed the validity of the order dated 04.09.2024 passed by the Debts Recovery Appellate Tribunal, Kolkata (hereinafter referred to as 'the Appellate Tribunal'), by which, the appeal preferred by the petitioner has been dismissed and the order dated 26.06.2024 passed by the Debts Recovery Tribunal-II at Hyderabad (hereinafter referred to as 'the Tribunal') has been affirmed.

3. Facts giving rise to filing of this Writ Petition briefly stated are that respondent Nos.1 and 2 had mortgaged the secured assets with the petitioner. Respondent Nos.1 and 2 did not repay the amount of loan and an amount of Rs.3,62,62,592/- was due against them. Thereupon, the

petitioner by an auction held on 30.10.2019 sold the secured assets belonging to respondent Nos.1 and 2 for a sum of Rs.6,09,00,000/-.

4. Respondent Nos.1 and 2 filed Securitization Application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, along with an application for condonation of delay. In the said proceeding, on 22.03.2024, respondent Nos.1 and 2 made an affidavit wherein they sought withdrawal of the Securitization Application and sought a direction to the petitioner to release the excess amount i.e., a sum of Rs.2,46,37,408/- along with accrued interest in favour of respondent Nos.1 and 2.

5. The Tribunal by an order dated 26.06.2024 directed the petitioner to refund the excess amount of Rs.2,46,37,408/- along with simple interest @6% per annum, to respondent Nos.1 and 2. Being aggrieved, the petitioner filed an appeal. The Appellate Tribunal by an order dated 04.09.2024 has dismissed the appeal. Hence, this Writ Petition.

6. Learned counsel for the petitioner submitted that once an application seeking withdrawal of the proceeding was made before the Tribunal, the Tribunal had become *functus officio* and could not have issued a direction to the petitioner to refund the amount of Rs.2,46,37,408/- along with simple interest @6% per annum. It is further submitted that the Tribunal ought to have appreciated that neither delay in filing the Securitization Application was condoned nor the Securitization Application was registered. Therefore, it was not permissible in law to pass the impugned order. In support of aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Ajay Mohan and others v. H.N. Rai and others**<sup>1</sup>. It is contended that the petitioner had sent a communication on 25.01.2020 to respondent Nos.1 and 2 to seek refund of the amount. However, respondent Nos.1 and 2 for the reasons best known to them did not contact the petitioner and did not receive the amount from them. Therefore, the petitioner is not liable to pay interest on the excess amount. It is further contended that the aforesaid aspect

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<sup>1</sup> (2008) 2 SCC 507

of the matter was not appreciated by the Appellate Tribunal as well. However, it is submitted that the petitioner has paid the excess amount of Rs.2,46,37,408/- by way of a demand draft dated 24.10.2024 which has been received by respondent Nos.1 and 2 on 18.11.2024. It is contended that the impugned order be set aside.

7. We have considered the rival submissions made on both sides and have perused the record.

8. It is not in dispute that an auction was held on 30.10.2019 in which the property belonging to respondent Nos.1 and 2 was sold for a sum of Rs.6,09,00,000/-. It is also not in dispute that the petitioner had a surplus amount of Rs.2,46,37,408/-. The petitioner had sent a communication dated 25.01.2020 to respondent Nos.1 and 2. The communication reads as under:

“Sub: Intimation about Surplus Amount – Rs.2,46,37,408/- reg.

This is informed to you that the subject mortgaged property, in the above mentioned loan account, was brought by the public auction conducted on 30.10.2019, under the SARFAESI Act, the same was sold out for the highest bid amount quoted by the auction purchaser to a sum of

Rs.6,09,00,000/- (rupees Six Crores Nine Lakhs only) as it is what it is conditions".

After deduction of your pending due amount Rs.3,62,62,592/- (rupees Three Crore Sixty Lakhs Sixty Two Thousand and Five Hundred and Ninety Two only) towards the loan account number mentioned above, surplus amount is pending against your loan account for a sum of Rs.2,46,37,408/- (Rupees Two Crore forty Six Lakhs Thirty Seven Thousand Four Hundred and Eight only).

While taking the possession of the above said property we found some articles in the said property which is belongs to you and the same was Recorded in our inventory report. Hence we request you to clear the same (i.e) Articles and belongings within 7 days from today or else it will be stored in our yard. Please find the enclosed inventory list for your reference.

Kindly collect the same in person from Authorized Officer, having office at: HDB Financial Services Ltd, SHREE BALAJI PSR TOWERS, 1 FLOOR, 1-8-6161/1, PRAKASH NAGAR, BEGUMPET, HYDERABAD - 500016.

Yours faithfully

For HDB Financial Services Ltd.,

Authorized officer."

Thus, it is evident that in the said communication, the petitioner has not informed respondent Nos.1 and 2 that they can collect the surplus amount of Rs.2,46,37,408/- from the petitioner. Respondent Nos.1 and 2 responded to the aforesaid communication by submitting a reply on 25.02.2020 wherein

they have stated that their property has been sold for a lesser consideration.

9. Respondent Nos.1 and 2 had filed a Securitization Application along with an application for condonation of delay. In the Securitization Application, an affidavit was filed on behalf of respondent Nos.1 and 2 in which the prayer was made to permit respondent Nos.1 and 2 to withdraw the Securitization Application and to direct the petitioner to release the excess sale proceeds of Rs.2,46,37,408/- with accrued interest. The relevant extract of the affidavit reads as under:

“3). It is humbly submitted that due to the personal reason and financial crunch, the Applicants herein wish to withdraw the above S.A with an intention to withdraw/receive the excess sale proceeds received by the Respondents pursuant to the sale/auction proceedings conducted against their residential house situated at Road No.12, Banjara Hills, Hyderabad in favour of the Respondent No.2.”

Thus, it is evident that respondent Nos.1 and 2 sought withdrawal of the Securitization Application along with a direction to the petitioner to release the excess sale proceeds along with interest. In other words, withdrawal of the Securitization Application was sought with a condition. The



Tribunal by an order dated 26.06.2024 observed *inter alia* that the petitioner has no objection to refund the amount with simple interest @ 6% per annum. However, the Tribunal held that the excess amount which belongs to respondent Nos.1 and 2 is with the petitioner. Therefore, they are entitled to interest. Accordingly, the Tribunal directed the petitioner to pay the excess amount along with simple interest @6% per annum. The proper course for the Tribunal would have been to register the Securitization Application and thereafter, to pass an order seeking withdrawal of the Securitization Application. However, this procedural irregularity does not invalidate the order passed by the Tribunal in any manner. The decision relied on by the learned counsel for the petitioner in **Ajay Mohan** (supra) has no application to the fact situation of the case as in the aforesaid decision, it was held that once an appeal is withdrawn, the Court becomes *functus officio*.

10. Admittedly, surplus amount of Rs.2,46,37,408/- was with the petitioner between the period from 27.11.2019 till the same was returned on 24.10.2024. The petitioner had not offered the aforesaid amount to respondent Nos.1 and 2. The

aforesaid amount was eventually paid to respondent Nos.1 and 2 through a demand draft dated 24.10.2024. The said course of action would have been taken by the petitioner at an earlier point of time also. The jurisdiction of this Court under Article 226 of the Constitution of India is not only extraordinary but discretionary as well. In the facts and circumstances of the case, we are not inclined to exercise writ jurisdiction to set aside the orders passed by the Appellate Tribunal and the Tribunal.

11. In the result, the Writ Petition fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

SD/- P. PADMANABHA REDDY  
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

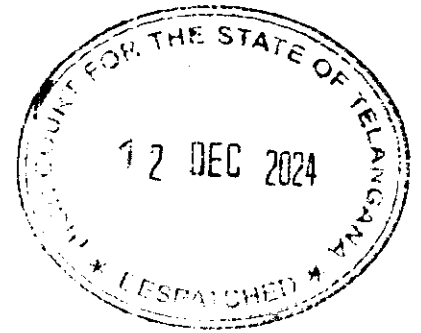
1. One CC to SRI P.S.RAJASEKHAR, Advocate [OPUC]
2. Two CD Copies

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**HIGH COURT**

**DATED: 29/11/2024**



**ORDER**

**WP.No.33517 of 2024**

**DISMISSING THE WRIT PETITION,  
WITHOUT COSTS**

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07/11/2024