

**IN THE HIGH COURT OF ANDHRA PRADESH:  
AT AMARAVATI**

\*\*\*

**Writ Petition No.1105 of 2019**

**Between:**

M/s. Kirlampudi Sugar Mills Limited,  
Represented by its Managing Director, Ch. Raghuram,  
Reg. Office 6-3-663/16/1, Jaferali Bagh,  
Somajiguda, Hyderabad – 500 082.

**.... Petitioner**

**And**

1) Recovery Officer-II, DRT, Department of Finance Services  
and **Two** others.

**....Respondents.**

**Writ Petition No.3007 of 2019**

**Between:**

M/s. Sri Siddhartha Infratech and Services (1) Private  
Limited, Near Bharatiya Vidhya Bhavan, Road No.84,  
Jubilee Hills, Hyderabad – 500 033, rep. by its Managing  
Partner Bandaru Narasimha Rao, S/o. Panduranga Rao,  
Aged about 57 years.

**.... Petitioner**

**And**

1) Recovery Officer-II, Debts Recovery Tribunal,  
Visakhapatnam and **Two** others.

**....Respondents.**

**Writ Petition No.25880 of 2021**

**Between:**

Central Bank of India, Kakinada Branch,  
Rep. by its Senior Manager,  
Kakinada, Andhra Pradesh.

**.... Petitioner**

**And**

1) Recovery Officer-II, Debts Recovery Tribunal,  
Visakhapatnam and **Three** others.

**....Respondents.**

Date of Judgment pronounced on : 12.04.2022

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**AND**

**THE HON'BLE SMT. JUSTICE V. SUJATHA**

1. Whether Reporters of Local newspapers : Yes/No  
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy: Yes/No  
of the Judgment?

---

**JUSTICE C. PRAVEEN KUMAR**

**\* THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**AND**

**THE HON'BLE SMT. JUSTICE V. SUJATHA**

**+ Writ Petition No.1105 of 2019**

% 12.04.2022

**Between:**

# M/s. Kirlampudi Sugar Mills Limited,  
Represented by its Managing Director, Ch. Raghuram,  
Reg. Office 6-3-663/16/1, Jaferali Bagh,  
Somajiguda, Hyderabad – 500 082.

**.... Petitioner**

**And**

\$ 1) Recovery Officer-II, DRT, Department of Finance  
Services and **Two** others.

**....Respondents.**

**Writ Petition No.3007 of 2019**

**Between:**

# M/s. Sri Siddhartha Infratech and Services (1) Private  
Limited, Near Bharatiya Vidhya Bhavan, Road No.84,  
Jubilee Hills, Hyderabad – 500 033, rep. by its Managing  
Partner Bandaru Narasimha Rao, S/o. Panduranga Rao,  
Aged about 57 years.

**.... Petitioner**

**And**

\$ 1) Recovery Officer-II, Debts Recovery Tribunal,  
Visakhapatnam and **Two** others.

**....Respondents.**

**Writ Petition No.25880 of 2021**

**Between:**

# Central Bank of India, Kakinada Branch,  
Rep. by its Senior Manager, Kakinada, Andhra Pradesh.

**.... Petitioner**

**And**

\$ 1) Recovery Officer-II, Debts Recovery Tribunal,  
Visakhapatnam and **Three** others.

**....Respondents.**

! Counsel for the Petitioner(s) :1) Sri Vedula Venkata Ramana,  
Learned Senior Counsel.  
2) Ms. V. Uma Devi.  
3) Sri Ch. Siva Reddy.

Counsel for the Respondents : Sri N. Harinath,  
Learned ASG, for Recovery  
Officer.

<Gist :

>Head Note:

? Cases referred:

- 1) (2013) 9 SCC 460
- 2) (2013) 10 SCC 83
- 3) AIR 1954 SC 349
- 4) 1990 (4) SCC 90
- 5) 1996 (5) SCC 705
- 6) 2017 SCC Online Del. 10931
- 7) MANU/KA/1296/2021
- 8) 2011 (6) CTC 369
- 9) 2022 SCC Online 372
- 10) 2020 (8) SCC 129
- 11) 2003 (8) SCC 648
- 12) 2015 (4) SCC 334
- 13) 2020 (15) SCC 146

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HONOURABLE SMT. JUSTICE V.SUJATHA**

**WRIT PETITION NO. 1105 OF 2019**

**AND**

**WRIT PETITION NO. 3007 OF 2019**

**AND**

**WRIT PETITION NO. 25880 OF 2021**

**COMMON ORDER:** *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) As all these Writ Petitions are inter connected, they are heard and disposed of by this Common Order taking Writ Petition No. 3007 of 2019 as lead petition.

2) (i) The 3<sup>rd</sup> Respondent herein [Borrower] availed credit facilities from 2<sup>nd</sup> Respondent Bank and when the 3<sup>rd</sup> Respondent committed default in payment of loan amount, 2<sup>nd</sup> Respondent Bank approached the Debt Recovery Tribunal, Visakhapatnam, and filed O.A. No. 9 of 2006. On contest, the said O.A. was allowed and a decree came to be passed covering the subject immovable property, which is land admeasuring Acres 42.36 cents in Pitapuram Town, Pitapuram Municipal Limits, East Godavari District.

(ii) The 2<sup>nd</sup> Respondent Bank took steps for execution of the said decree before the 1<sup>st</sup> Respondent by filing R.P. No. 14 of 2009 under the provisions of Recovery of Debts Due To The Banks and Financial Institutions Act, 1993, [**RDDB Act**]. The subject land was put to auction on 14.06.2018.

The Petitioner, namely, Sri Siddhartha Infratech and Services (I) Private Limited, became the highest bidder and on the same day he deposited 25% of the bid amount, which was to the tune of Rs.7.00 crores. He made arrangement for payment of balance bid amount within 15 days, in terms of Rule 57(2) of schedule II of income tax Act. But On 14.06.2018 itself, the 3<sup>rd</sup> Respondent filed W.P. No. 18502 of 2018, by way lunch motion, wherein, this Court on the same day passed the following order:

“Ms. V. Uma Devi, learned Counsel for the Petitioner, places reliance of the decision of this court in Pochiraju Industries Ltd, Tamilnadu Vs. Punjab National bank [2018(2) ALT 128(D.B)]

The issue raised in the Writ Petition in the context of the afore stated decision requires examination.

There shall accordingly be interim stay of further proceedings pursuant to the auction sale held on 14-06-2018. Respondent No.2-Bank shall receive 25% of the sale consideration from the auction purchaser, if any, and shall not confirm the sale or receive the balance sale consideration pending further orders.

Post on 20-06-2018.”

(iii) In view of the interim order, the Petitioner was precluded from paying 75% of balance sale consideration. Thereafter, W.P. No.18502 of 2018 was contested and the same was dismissed on 26.10.2018. After receipt of copy of the judgment on 08.11.2018, the 1<sup>st</sup> Respondent herein issued a letter to the Petitioner directing him to pay balance amount on or before 23.11.2018. At that point of time, the 3<sup>rd</sup> Respondent filed W.P. No. 41658 of 2018 questioning the

communication dated 08.11.2018 on the ground that the same is contrary to Rule 57(2) of the Act. On 19.11.2018, this Court passed an interim order, which is as under:

“Mr. Ch.Siva Reddy, learned Counsel takes notice for the respondents 1 and 2. Issue notice before admission to the 3<sup>rd</sup> respondent returnable by 07.12.2018. It appears that pursuant to the interim order passed by this Court on 14.06.2018, the highest bidder deposited 25% of the bid amount within time. After the dismissal of the writ petition on 26.10.2018, the Recovery Officer has given (15) days time by the letter dated 08.11.2018 to the 3<sup>rd</sup> Respondent to make payment of the balance 75%. It also appears that the balance amount has been deposited by the 3<sup>rd</sup> respondent. But, the learned counsel for the petitioner states that in terms of Rule 60(1)(a) of the Rules under Second Schedule of the Income Tax Act, the petitioner is prepared to deposit the amount indicated as due under the proclamation of sale dated 09.05.2018. In the proclamation of sale dated 09.05.2018, the amount due as on 30.04.2018 is indicated to be Rs.18,83,00,951.47 ps. The Petitioner, under Rule 60(1)(a) of the Rules, has (30) days time from the date of proclamation. In this case, the date of proclamation is 14.06.2018. The interim stay granted by this Court in the previous writ petition, was on the very same day, namely, 14.06.2018. But, the writ petition was dismissed on 26.10.2018. On the ground that the copy of the dismissal order was received on 08.11.2018, the Recovery Officer gave to the highest bidder (15) days time from 08.11.2018. If the time to obtain a certified copy of the order, is made available to the 3<sup>rd</sup> respondent for the propose of computing the period of (15) days, the same can be made available to the borrower also under Rule 60(1)(a) of the Rules. Therefore, if the Petitioner makes payment of Rs.18,83,00,951.47 ps., on or before 07.12.2018, the sale held on 14.06.2018 may be cancelled. To give an opportunity to the petitioner to comply with this Rule, there will be an interim stay of issue of sale certificate and further proceedings thereto. If the money is not paid on or before 07.12.2018, the Recovery Officer will be at liberty to issue a sale

certificate and proceed further. Call on 10.12.2018 for reporting compliance”.

3. From a reading of the above order, it is clear that if the Petitioner i.e. borrower commits default in payment of loan amount on or before 07.12.2018, the Recovery Officer was given liberty to issue Sale Certificate and proceed further. As the Writ Petitioner committed default in payment of loan amount, the 1<sup>st</sup> Respondent issued a letter dated 25.01.2019 requesting the auction purchaser to pay balance amount within 15 days. Questioning the said communication dated 25.01.2019, W.P.No.1105 of 2019 came to be filed by the borrower contending that it is violative of Rule 57(2) of the schedule II.

4. When the above Writ Petitions are pending consideration before the High Court, the 1<sup>st</sup> Respondent issued the present impugned Order, dated 12.02.2019, forfeiting the amount deposited by the auction purchaser and also canceling the auction Sale, dated 14.06.2018. Assailing the same, W.P. No. 3007 of 2019 came to be filed. During pendency of these two Writ Petitions, the Central Bank of India filed W.P. No. 25880 of 2021 questioning the action of the 1<sup>st</sup> Respondent in remitting the amount of Rs.7,39,68,473.55 to Government treasury as illegal, arbitrary and against the provisions of RDDB Act.

5. (i) Sri. Vedula Venkata Ramana, learned Senior Counsel appearing for the Petitioner in W.P. No. 3007 of 2019 would

contend that, though Rule 57 of the Second Schedule of the Income Tax Act, is applicable to the Recovery Officer, as per the law laid down by the Hon'ble Supreme Court and though the requirement of Rule 57 was held to be mandatory, according to him, there are number of court orders passed at the instance of the borrower interfering right from the date of auction, thereby disabling the Petitioner/auction purchaser from depositing the balance bid amount. Since the borrower failed to comply with the conditions imposed in the interim orders obtained by him, the timeline contained in Rule 57 has elapsed due to Court orders. He would further submit that the Court order should not cause prejudice to a party [*Actus Curiae Neminem Gravabit*]. In view of the fact that delay, if any, caused for payment of the amount was due to the fault of the borrower, there is no default on the part of the Petitioner in depositing balance bid amount.

(ii) Having regard to the order passed in W.P.No.41658 of 2018, dated 19.11.2018, he would submit that the same clearly protects the Petitioner and requires the Recovery Officer to accept the balance bid amount, and that the Recovery Officer has no power to cancel the auction dated 14.06.2018 and forfeit 25% of the bid amount paid by the auction purchaser.

(iii) The learned Senior Counsel further contends that the 3<sup>rd</sup> Respondent – borrower, who committed default of the

orders passed, cannot claim any equity nor can point out the mistakes if any committed by the Writ Petitioner. While commenting on the bona fides of the borrower, learned Senior Counsel would contend that there is absolutely no justification for this Court to protect the borrower at this length of time, more so, when he never availed the opportunities given by the Court for payment of entire due amount. According to him, it is settled law that the defaulter has no equity and the equity of redemption is lost when once the auction sale has taken place on 14.06.2018. He relies upon a judgment of the Hon'ble Supreme Court in support of his plea.

6. Ms. V.Uma Devi, learned Counsel appearing for the Petitioner in W.P. No. 1105 of 2019, which came to be filed questioning the action of the 1<sup>st</sup> Respondent in extending the time for payment, would submit that the time frame mandated under Rule 57 of the Income Tax Act, for payment of balance consideration commences from the date of dismissal of the writ petition i.e., 26.10.2018 and not from the date of obtaining the order. The learned Counsel further submits that, the obligation of the auction purchaser for payment of remaining 75% of sale consideration starts from the date of dismissal of the order i.e., 26.10.2018. The 15 days time for payment of balance consideration commenced on 26.10.2018 and expired on 09.11.2018, but, the auction

purchaser never made any effort to pay the amount during the said period. It is further stated that, on 19.11.2018, the Hon'ble High Court in W.P. No. 41658 of 2018 granted 15 days time to the auction purchaser for compliance of the conditional order starting from 08.12.2018. Though, 15 days time elapsed on 23.12.2018, the auction purchaser failed to pay the balance amount. Left with no option, the Recovery Officer issued proceedings forfeiting the initial payment.

(ii) The learned Counsel further contends that, without depositing 75% amount as required under law, within the time prescribed, the auction purchaser is shifting the blame on to the borrower, to retrieve his amount. It is further alleged by her that, from 26.10.2018 to 08.11.2018 and from 08.12.2018 to 22.12.2019 and then from 22.12.2018 to 12.02.2019, there were no orders restraining the auction purchaser from paying 75% of the auction amount. But, without paying the same, is now trying to find fault with the borrower and the Recovery Officer. She relied upon an order passed by this Court in W.P. No. 26383 of 2013 in support of her plea.

7. Sri. Ch. Siva Reddy, learned Counsel appearing for the Petitioner in W.P. No. 25880 of 2021 would contend that, if the auction purchaser fails to pay 75% of the sale consideration, the forfeited amount should be remitted to the Bank, as recovery of the amount is for the debt due to the

bank or financial institutions and, forfeiting the amount to the Government Treasury is bad in law. In other words, his argument appears to be that it is the bank which has incurred sale expenses including manpower and also issued notices number of times, and as such, the bank is entitled to the forfeited amount. He relies upon a judgment of the Bombay High Court in W.P. No. 3742 of 2012 in support of his plea.

8. In reply, Sri. Vedula Venkata Ramana, learned Senior Counsel, relied upon the judgments reported in **C.N. Paramsivan And Another V. Sunrise Plaza through Partner and Others**<sup>1</sup> and **General Manager, Sri Siddeshwara Cooperative Bank Limited and Another**<sup>2</sup>. According to him, even if certain provisions are mandatory in nature, the same can be waived for the benefit of bank or for the borrower. Since, the borrower failed to comply with the interim orders in spite of giving number of opportunities, the auction purchaser cannot be found fault with for the default committed, if any, in payment of the amount, more so, having regard to the orders passed by this Court.

9. Reiterating the arguments advanced, Ms. V. Uma Devi, learned Counsel appearing for the Petitioner in W.P. No.

---

<sup>1</sup> (2013) 9 SCC 460

<sup>2</sup> (2013) 10 SCC 83

1105 of 2019, would submit that the Recovery Officer has no power to extend time for payment of money.

10. At this stage, Sri. N. Harinath, Assistant Solicitor General, appearing for Recovery Officer submit that, vide proceedings dated 12.02.2019, the Recovery Officer has already credited the amount to Government of India and that the argument of the counsel that Recovery Officer has no power to extend the time, has no legs to stand. He took us through the judgment of Apex court in Pannirsivam in support of his case.

11. Having regard to the peculiar facts of the case, the following issues would arise for consideration:

*(a) Whether Rule 57(1) and 57(2) are mandatory?*

*(b) Whether Recovery Officer has power to extend time for payment of auction amount?*

*(c) Whether Recovery Officer has power to cancel the auction sale and forfeit the amount to the Government treasury in the facts of the case?*

*(d) What are the effects of the orders passed by this Court from time-to-time at the instance of the borrower?*

*(e) What is the effect of the interim order passed by this court when the writ petition was finally dismissed?*

**I. Issue(a):**

12. As against the mandatory conditions of paying the amount within a stipulated period pursuant to the auction, there are orders of the High Court staying the payment/the payment process at the instance of the borrower. What is the effect of the orders and whether the Recovery Officer was

right in giving time for payment and later canceling the auction/sale notice and forfeiting the amount paid to the Government?

13. Before proceeding further, it would be appropriate to extract Section 29 of RDDB Act, 1993, which is as under.

**“Section 29. Application of certain provisions of Income-tax Act.**

The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the assessee shall be construed as a reference to the defendant under this Act.”

14. It would also be appropriate to refer to Rules 57 and 58 of Schedule – II to Income Tax Act, 1961, [**I.T. Act**] which is as under:

**Deposit by purchaser and resale in default.**

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

**Procedure in default of payment.**

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

15. A reading of Section 29 of the I.T. Act, would show that Rules under I.T. Act are applicable only “as far as possible” and with modifications as required, as if the said provisions and the Rules referred to the amount of debt due under RDDB Act in-stead of I.T. Act [**C.N. Paramsvan**, cited 1<sup>st</sup> above].

16. Dealing with Section 29 of RDDB Act, the Hon’ble Apex Court in **C.N. Paramsvan** [cited 1<sup>st</sup> above] held as under:

“21. Applying the above principles to the case at hand Section 29 of the RDDB Act incorporates the provisions of the Rules found in the Second Schedule to the Income Tax Act for purposes of realisation of the dues by the Recovery Officer under the RDDB Act. The expressions “as far as possible” and “with necessary modifications” appearing in Section 29 have been used to take care of situations where certain provisions under the Income Tax Rules may have no application on account of the scheme under the RDDB Act being different from that of the Income Tax Act or the Rules framed thereunder. The provisions of the Rules, it is manifest, from a careful reading of Section 29 are attracted only in so far as the same deal with recovery of debts under the Act with the modification that the ‘amount of debt’ referred to in the Rules is deemed to be one under the RDDB Act. That modification was intended to make the position

explicit and to avoid any confusion in the application of the Income Tax Rules to the recovery of debts under the RDDB Act, which confusion could arise from a literal application of the Rules to recoveries under the said Act. Proviso to Section 29 further makes it clear that any reference “to the assessee” under the provisions of the Income Tax Act and the Rules shall be construed as a reference to the defendant under the RDDB Act. It is noteworthy that the Income Tax Rules make provisions that do not strictly deal with recovery of debts under the Act. Such of the rules cannot possibly apply to recovery of debts under the RDDB Act. For instance Rules 86 and 87 under the Income Tax Act do not have any application to the provisions of the RDDB Act, while Rules 57 and 58 of the said Rules in the Second Schedule deal with the process of recovery of the amount due and present no difficulty in enforcing them for recoveries under the RDDB Act. Suffice it to say that the use of the words “as far as possible” in Section 29 of RDDB Act simply indicate that the provisions of the Income Tax Rules are applicable except such of them as do not have any role to play in the matter of recovery of debts recoverable under the RDDB Act. The argument that the use of the words “as far as possible” in Section 29 is meant to give discretion to the Recovery Officer to apply the said Rules or not to apply the same in specific fact situations has not impressed us and is accordingly rejected.

23. It follows that while the phrase “as far as possible”, may be indicative of a certain inbuilt flexibility, the scope of that flexibility extends only to what is “not at all practicable”. In order to show that Rules 57 and 58 of the Second Schedule of the Income Tax Act may be departed from under the RDDB Act, it would have to be proved that the application of these Rules is “not at all practicable” in the context of RDDB Act.”

17. Paragraph Nos. 23, 24, 26 and 27 of the said judgment deal with the issue as to whether Rule 57(1), (2) and Section 58 are mandatory. The same are as under:

“23. .... In order to show that Rules 57 and 58 of the Second Schedule of the Income Tax Act may be departed from under the RDDB Act, it would have to be proved that the application of these Rules is “not at all practicable” in the context of RDDB Act.”

24. The interchangeable use of the words possible and practicable was previously established by a three-judge Bench of this Court in ***N.K. Chauhan and Ors. v. State of Gujarat and Ors.***, (1977) 1 SCC 308, where this Court observed that in simple Anglo-Saxon Practicable, feasible, possible, performable, are more or less interchangeable. Webster defines the term practicable thus:

- (1). That can be put into practice; feasible.
- (2). That can be used for an intended purpose; usable.

26. It is, therefore, reasonable to hold that the phrase as far as possible used in Section 29 of the RDDB Act can at best mean that the Income Tax Rules may not apply where it is not at all possible to apply them having regard to the scheme and the context of the legislation.

27. There is nothing in the provisions of Section 29 of RDDB Act or the scheme of the rules under the Income Tax Act to suggest that a discretion wider than what is explained above was meant to be conferred upon the Recovery Officer under Section 29 of the RDDB Act or Rule 57 of the Income Tax Rules which reads as under:

57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.”

18. After referring to ***Manilal Mohanlal Shah and Ors. V. Sardar Sayed Ahmed Sayed Mahmed and Anr***<sup>3</sup>; ***Sardara Singh (Dead) by Lrs. and Anr. V. Sardara Singh (Dead) and Ors.***<sup>4</sup> ***Balram, son of Bhasa Ram V. Ilam Singh and Ors.***<sup>5</sup>, the Hon’ble Apex Court reiterated the legal position in the following words:

7...it was clearly held [in Manilal Mohanlal] that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected...

From the above, it is clear that Rule 57 of Schedule II of Income Tax Act, 1961 is mandatory in nature and breach of the requirements under the Rule, will render the auction non-est in the eye of law.

19. Accordingly, Issue (a) is answered holding that Rule 57 is mandatory.

## **II. Issue(b):**

---

<sup>3</sup> AIR 1954 SC 349

<sup>4</sup> 1990 (4) SCC 90

<sup>5</sup> 1996 (5) SCC 705

20. Once Rule 57 is held to be mandatory, whether it follows automatically that Recovery Officer has no power to extend time or whether there is any flexibility to Rule when it is not at all possible to apply (paras 22 to 26 of *Paramsivam*) The said issue was also discussed in ***Shri Sunil Gupta V. Canara Bank and Anr***<sup>6</sup>; ***Asset Reconstruction Company India Ltd. and Ors. Vs. Esteem Estate Projects Pvt. Ltd. and Ors***<sup>7</sup> and ***P.Kumaran V. The Debts Recovery Appellate Tribunal & Ors***<sup>8</sup>.

21. A reading of the three judgments, referred to above, would show that Madras High Court in ***P. Kumaran*** [cited 8<sup>th</sup> above] held that, sub-rule (1) of Rule 57 is mandatory while sub-rule (2) is not and could be applied with necessary modifications, meaning thereby that the Recovery Officer gets power to extend the time for payment with necessary modifications, which should be in existence in the terms and conditions of the Sale Notice itself. However, in ***Asset Reconstruction Company India Ltd.*** [cited 7<sup>th</sup> above], the Karnataka High Court dealt with a situation where such a condition was there in Sale Notice itself. After referring to the judgment of Apex Court in ***C.N. Paramsivan*** [cited 1<sup>st</sup> above], where Section 29 and Rule 57 of Second Schedule

---

<sup>6</sup> 2017 SCC Online Del. 10931

<sup>7</sup> MANU/KA/1296/2021

<sup>8</sup> 2011 (6) CTC 369

were held to be mandatory, distinguished the applicability of the ratio laid down therein, in view of the specific condition in the auction notice for extension of time. However, the Delhi High Court in ***Shri Sunil Gupta*** [cited 7<sup>th</sup> above], while dealing with a situation where there was a delay of 2 days in payment of 75% of the due amount, held that Rules 57 (1) and (2) and 58 are mandatory in nature and leave no scope of discretion in the hands of the Recovery Officer to relax the terms, in the fact situation, though neither the borrower nor the secured creditor opposed the same.

22. Having regard to the above, it is now to be seen whether the Recovery Officer was right in issuing notices to the auction purchaser for payment of balance 75%, after expiry of 15 days time from the date of auction?

23. Admittedly, instant case is not one where there was any condition in the Sale Notice giving power to the Recovery Officer for extension of time. But, here is a case where the amount could not be paid by the auction purchaser due to an interim order passed by the High Court at the instance of the borrower and the subsequent order passed by the High Court at the instance of the borrower, who ultimately failed to succeed in the Writ Petitions filed by him. To understand the same, it would be appropriate to refer to factual situation once again:

24. The fact make it clear that in the first instance, it was the borrower who approached the High court vide W.P. No. 18502 of 2018 and an interim order came to be passed on 14.06.2018 i.e., on the date of auction itself permitting the auction to go on and Respondent bank to receive 25% of the sale consideration but further proceedings thereto were stayed including confirmation of sale and payment of 75% of balance sale consideration. Later the said Writ Petition was dismissed on 26.10.2018. After obtaining a copy of the order on 08.11.2018, the Recovery Officer issued notice to the auction purchaser for payment of balance 75% on or before 23.11.2018.

25. (It is to be noted here that as the auction purchaser failed to pay the balance sale consideration within 15 days, which is made the ground to issue proceedings dated 12.02.2019] canceling the sale notice and forfeiting the amount, violating Rule 57, the Recovery Officer ought to have done it after the expiry of first 15 days from the date of sale. Nothing of that sort was done. On the other hand, the Recovery Officer waited till the completion of Court proceedings and then gave notice calling upon the auction purchaser to pay the balance 75% of sale amount within 15 days, for the reason that interim order came to be passed by the High Court on the date of auction itself. It is also to be

noted here that on the date of auction itself, 25% of the sale consideration was paid.)

26. The Hon'ble Supreme Court in ***Mekha Ram and Others Etc. V. State of Rajasthan and Others Etc***<sup>9</sup> , after referring to ***Indore Development Authority V. Manohar Lal***<sup>10</sup>; ***South Eastern Coalfields Ltd. V. State of M.P.***<sup>11</sup> and ***State of Punjab V. Rafiq Masih***<sup>12</sup>, where principle of restitution was discussed by the Constitution Bench, it held in paragraph 6.1, 6.2 and 6.3, as under:

“6.1 At this stage, the decision of this Court in the case of ***Indore Development Authority*** (supra) on principle of restitution is required to be referred to. In the said decision, a Constitution Bench of this Court after considering the earlier decision in the case of South Eastern Coalfields (supra) and other decisions on the principle of restitution, has observed and held in paragraphs 335 to 336 as under:

In re : Principle of restitution

“335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In South Eastern Coalfields Ltd. v. State of M.P. [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648], it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final

---

<sup>9</sup> 2022 SCC Online SC 372

<sup>10</sup> 2020 (8) SCC 129

<sup>11</sup> 2003 (8) SCC 648

<sup>12</sup> 2015 (4) SCC 334

decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern Coalfields [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648]* thus: (SCC pp. 662-64, paras 26-28)

“26. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue, U.P. [Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505]*). In law, the term “restitution” is used in

three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:

'Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.'

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...

27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami [A. Arunagiri Nadar v. S.P. Rathinasami, 1970 SCC OnLine Mad 63]). In the exercise of such inherent

power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the “act of the court” embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law.

... the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.”

(emphasis supplied)

336. In *State of Gujarat v. Essar Oil Ltd.* [*State of Gujarat v. Essar Oil Ltd.*, (2012) 3 SCC 522 : (2012) 2 SCC (Civ) 182] , it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed : (SCC p. 542, paras 61-62) “61.

The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within the third category of common

law remedy, which is called quasi-contract or restitution.

62. If we analyse the concept of restitution, one thing emerges clearly that the obligation to retribute lies on the person or the authority that has received unjust enrichment or unjust benefit (see Halsbury's Laws of England, 4th Edn., Vol. 9, p. 434).”

In the said decision, it is further observed and held that the restitution principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, at his behest, should not be perpetuated.

6.2 In the case **of Ouseph Mathai v. M. Abdul Khadir**, reported in (2002) 1 SCC 319, it is observed and held that after the dismissal of the *lis*, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay.

6.3 Even otherwise, no one can be permitted to take the benefit of the wrong order passed by the court which has been subsequently set aside by the higher forum/court. As per the settled position of law, no party should be prejudiced because of the order of the court.”

27. From the Judgment of Hon'ble Supreme Court, it is clear that any advantage secured by a litigant, on account of orders of Court, at his behest, should not be perpetuated and after dismissal of the *lis*, the party will be relegated to the position which existed prior to filing of the petition in the Court, which granted the stay and that no party shall be prejudiced because of the order of the court.

28. Applying the ration laid down therein, the position goes back to date of auction i.e., 14.06.2018, which is the date of filing Writ Petition and date of interim order as well. Hence we feel that there is nothing wrong in issuing notice on 08.11.2018 calling upon the auction purchaser to pay the balance 75% of the sale amount. (Whether the Recovery Officer has such power will discuss a little later).

29. At this stage, one other principle, which is urged by the learned Senior Counsel, should also be addressed to, namely, no party should suffer due to act of the court, [*Actus Curiae Neminem Gravabit*]. [**Odisha Forest Development Corporation Ltd. V. Anupama Traders**<sup>13</sup>].

30. As stated earlier, in the instant case, everything got stalled except depositing 25% of the sale consideration by the auction purchaser, at the instance of the borrower, who ultimately lost the case. Therefore the auction purchaser cannot be put to loss due to an order passed by the court, at the instance of the borrower which was later vacated on dismissal of writ petition.

31. The journey of the auction purchaser did not stop here. The call letter, dated 08.11.2018, issued to the auction purchaser was again challenged by the borrower in W.P.

---

<sup>13</sup> 2020 (15) SCC 146

No.41658 of 2018 on 19.11.2018 i.e., before the expiry of 15 days given to pay 75% of balance sale consideration. The High Court after referring to earlier history of the case, by way of interim order, gave an opportunity to the borrower to pay Rs.18,83,00,951.47 paise on or before 07.12.2018. It was held that if the said amount is not paid on or before 07.12.2018, the Recovery Officer was given liberty to proceed further by issuing sale certificate. The borrower failed to comply with the orders, though the order came to be passed at his instance, thereby putting the auction purchaser to loss again.

32. As the borrower committed default again, the Recovery Officer again issued another notice on 25.01.2019 calling upon the auction purchaser to pay balance sale consideration giving 15 days time in terms of the order of this court. This is challenged in W.P. No. 1105 of 2019 by the borrower, but no interim order was passed by the High Court.

33. From the above, the following things would emerge:

- a) the borrower has no intention to pay the amount though order came to be passed at his instance;
- b) in view of **Mekha Ram and Others** [cited 9<sup>th</sup> above], the issue goes back to the date of auction.
- c) the interim order, dated 19.11.2018, passed in W.P. No. 41658 of 2018 does not anywhere prescribe any time

limit for the Recovery Officer to issue notice. On the other hand, all powers were given to the Recovery Officer to proceed further if the borrower commits default [not paying Rs.18.00 crores on or before 09.12.2018].

d) in view of the default committed again by the borrower, the Recovery Officer issued another notice on 25.01.2019 giving 15 days time to pay the amount to auction purchase as sale certificate cannot be issued without payment of balance amount.

34. Ms. V. Uma Devi, learned Counsel would contend that after the borrower failed to comply with the order by not paying the amount by 07.12.2018, nothing prevented the auction purchaser to pay the amount, more so when there is no interim order.

35. As seen from the record, the auction purchaser could not have imagined that the borrower would commit default in payment of the amount. As urged by Sri. N. Harinath, Assistant Solicitor General, the Recovery Officer needs time to verify before calling upon the auction purchaser for payment, more so, when the payment would be made to the Bank and not to the Recovery Officer. We feel that some leverage of time should be given to the Recovery Officer to verify the fact situation and then proceed further, as directed by the High Court, more so, when no time-limit was fixed by

the Court in its interim order. Further, the issuance of notice to auction purchaser by the Recovery officer cannot be found fault, for the reason, that the Hon'ble Court in its interim order, gave such power to him, namely, issuance of sale certificate, which can be only after payment of balance 75% of sale consideration, for which a notice is required to be given.

36. At this stage, it is very much important to point out that W.P. No. 41658 of 2018 was permitted to be dismissed as infructuous, in view of the subsequent events, which came to be challenged in W.P. No.1105 of 2019. Therefore, the action of the Recovery Officer, which was challenged in W.P. No. 41658 of 2018 cannot be found fault with now in these proceedings.

37. Having regard to all the aforesaid circumstances, there is nothing wrong in Recovery Officer giving time to the auction purchaser for payment of the balance bid amount.

**II. Issue (c), (d) and (e):**

38. In view of pendency of W.P. No. 1105 of 2019 and having regard to the earlier orders passed, Sri. Vedula Venkata Ramana, learned Senior Counsel for the Petitioner would submit that, the Recovery Officer did not allow the auction purchaser to deposit the balance bid amount. Though, the said Writ Petition is pending and it is now tagged on, the

Recovery Officer has cancelled the auction sale, dated 14.06.2018, and forfeited 25% of the amount paid on the date of auction to the Treasury mainly on the ground that the auction purchaser failed to pay 75% of the bid amount to the appellant bank within a period of 15 days from 25.01.2019.

39. As stated earlier, the notice, dated 25.01.2019, calling upon the auction purchaser to pay the bid amount is challenged in W.P. No. 1105 of 2019, which is pending consideration. Though, no interim orders are passed, but the learned Counsel for the Petitioner would submit that the Recovery Officer refused to accept the amount, more so, having regard to the challenge made earlier with regard to the power of the Recovery Officer extending time for payment of the amount. Immediately, after completion of 15 days time, impugned order, dated 12.09.2019, came to be passed, which is under challenge in W.P. No. 3007 of 2019.

40. As seen from the entire gamut of the case, it was the borrower who is responsible for filing case-after-case before the High Court and on two occasions the auction purchaser was prevented from paying the balance bid amount. When the power of the Recovery Officer is in cloud, which is challenged not only in the earlier Writ Petitions but also in W.P.No.1105 of 2019, one cannot find fault with the auction purchaser in not paying the amount, more so, having regard

to the plea taken that the Recovery Officer did not accept the amount. No counter is filed by the Recovery Officer rebutting the plea of the auction purchaser. Even otherwise, the judgments of the High Courts referred to above, more particularly, the judgment of the Division Bench of the Karnataka High Court and the judgment of the Division Bench of the Madras High Court, clearly held that even mandatory statutory provisions can be waived, if the fact situation warrants. Though Rule 57 was held to be mandatory by the Hon'ble Supreme Court in **C.N. Paramasivan** [cited 1<sup>st</sup> above], but the same distinguished by the Division Bench of the Karnataka High Court on the ground that the sale notice permits extension of time.

41. Further, the order impugned, dated 12.02.2019, refers to Rule 13 and 14 of the online E-auction sale. Rule 14 states that, "*in case of default in payment by the successful bidder / auction purchaser within the stipulated time, the sale will be cancelled and the amount already paid will be forfeited and the property will be again put to sale*". Strangely, this Rule was never followed by the Recovery Officer, nor was it brought to the notice of the Court at the time of passing of the interim order in W.P. No.41658 of 2018. On the other hand, the interim order permits the Recovery Officer to issue Sale Certificate, which remained unchallenged.

42. At this stage, it would be appropriate to note that a notice came to be issued by the Recovery Officer of the Debts Recovery Tribunal, Visakhapatnam, permitting the auction purchaser to deposit 75% within the stipulated time i.e., 15 days from the date of receipt of the order made by him on 25.01.2019. A copy of the same was marked to the auction purchaser. There is no material on record to show as to when the auction purchaser received the order. It would be appropriate to extract the relevant portion of the order, which is as under:

“As per the Hon’ble High Court order I am herewith permitting the auction purchaser to deposit balance bid amount of 75% within the stipulated period i.e., 15 days from the date of receipt of order by me i.e., on 25.01.2019.”

43. A reading of the above would show that 15 days time for payment would be “*from the date of receipt of the order*”. It does not say from the date of order, which is 25.01.2019. These wordings assumes significant, for the reason that the auction purchaser was not a party to the order passed by the Debts Recovery Tribunal in R.P. No. 14 of 2009 in O.A. No.09 of 2006, wherein, time was given for payment of the amount. Definitely, things would have been different had the auction purchaser been a party to the order passed in R.P. No. 14 of 2009. Under those circumstances, it cannot be said that the auction purchaser failed to comply with the order of paying the amount within the period of 15 days,

more so, when the wording in Rule 57 is that “the amount to be paid within 15 days from the date of sale”. Paying the amount within 15 days of sale, as contemplated under Rule 57 would be relevant if the auction purchaser would be very much available at the time of sale. But, as seen from the record here, he was not a party before the Tribunal, when the Order came to be passed and probably for that reason the Recovery Officer used the word 15 days from the date of receipt of the order. No counter is filed by the Recovery Officer disputing the same. Having regard to the above, the order of the Recovery Officer forfeiting the amount and canceling the sale on the ground that the Petitioner has not complied with payment of the amount within a period of 15 days from 25.01.2019 may not be correct.

44. Insofar as the powers of the Recovery Officer giving such notice is concerned, the Hon’ble Supreme Court has held that payment of amount within 15 days is mandatory.

45. But, in the instant case, order passed by the Recovery Officer in terms of Rule 57 was stayed by the High Court on certain terms and later on the said Writ Petition was rejected and when the Recovery Officer issued another notice, the borrower again approached the High Court, wherein, he was directed to deposit Rs.18.00 crores by 07.12.2018, which he could not do. In view of the orders of the High Court, Recovery Officer proceeded further by issuing another letter

for payment, which was again challenged. As held in **Mekha Ram and Others Etc. Etc** [cited 9<sup>th</sup> above], after the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition, which has passed the interim order. After the dismissal of W.P.No.18502 of 2018 on 26.10.2018, and the interim order, dated 19.11.2018, being not been complied with by the borrower, so, the position goes back to the date of auction. Then the notice, dated 25.01.2019, has to be taken as one issued in terms of auction held in the month of June 2018, i.e., after payment of 25% of the amount. That being so, the auction purchaser has to pay the amount within 15 days, from the said date, but, he was not aware about the order passed on 25.01.2019, as he was not a party before the Debts Recovery Tribunal, when the order came to be passed, For the said reason, as observed earlier, the Recovery Officer categorically gave 15 days time from the date of receipt of the order. Therefore, issuing of the notice calling upon the auction purchaser to pay the amount, in the facts and circumstances of the case, though mandatory, cannot be said to be illegal. Consequently, the impugned notice cancelling the sale and forfeiting the amount to Government Treasury are set aside. Hence, it may not be necessary for us to go into the issue raised by the Bank in W.P.No.25880 of 2021 already amount remitted to Government Treasury.

46. For all the above reasons, Writ Petition No.3007 of 2019 is **allowed**; consequently, the Recovery Officer will issue a fresh notice forthwith giving 15 days time for payment of the amount and in default of payment of amount, with the time stipulated, he may take steps in accordance with law.

47. Consequently, in the fact situation, Writ Petition No. 1105 of 2019 is **dismissed**. Further, no orders are required in Writ Petition No. 25880 of 2021, since, the balance 75% of the sale consideration has to be deposited with the respondent/Bank. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

---

**JUSTICE C. PRAVEEN KUMAR**

---

**JUSTICE V.SUJATHA**

Dated:12.04.2022

**Note: LR copy to be marked.  
SM / MS.**

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HONOURABLE SMT. JUSTICE V.SUJATHA**

**WRIT PETITION NO. 1105 OF 2019**

**AND**

**WRIT PETITION NO. 3007 OF 2019**

**AND**

**WRIT PETITION NO. 25880 OF 2021**

**Note: LR copy to be marked.  
SM / MS.**

Date:12.04.2022.

SM / MS.