

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION NO: 17650 of 2024

SRI GOLLA HARIDASYADAV,, S/O. GOLLA LAKSHMANA
AGED ABOUT- 63 YRS, OCC- BUSINESS, R/O. D.NO.
15/117-A, VICTORIA PETA, ADONI, KURNOOL DISTRICT,
ANDHRA PRADESH, 518301.

... Petitioner

Versus

THE STATE OF ANDHRA PRADESH, . REP.BY ITS
PRINCIPAL SECRETARY, TRANSPORT DEPARTMENT,
SECRETARIATE AMARAVATI, GUNTUR DISTRICT AND
OTHERS

... Respondents

DATE OF ORDER PRONOUNCED : **01.07.2025**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

1. Whether Reporters of Local Newspapers
may be allowed to see the order? : Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wish to
see the fair copy of the order? : Yes/No

SUBBA REDDY SATTI, J

* HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

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Writ Petition No. 17650 of 2024

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... Respondents

! Counsel for Petitioner : Ms. Priyanka, learned counsel

^ Counsel for Respondents : Sri Rasheed, Assistant Government
Pleader for Transport;
Sri Satyanarayana Moorthy, learned
standing counsel and Smt. Sodum
Anvesha, learned counsel

< Gist:

> Head Note:

? Cases referred:

- 1) (2004) 2 SCC 1
- 2) (2022) 5 SCC 710
- 3) (2022) 11 SCC 761
- 4) (2011) 14 SCC 739
- 5) (2007) 2 SCC 230
- 6) (2000) 7 SCC 521
- 7) (2003) 3 SCC 541
- 8) (2003) 5 SCC 413
- 9) (2003) 2 SCC 577

This Court made the following:

APHC010347602024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3331]

TUESDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 17650/2024

Between:

1. SRI GOLLA HARIDASYADAV,, S/O. GOLLA LAKSHMANA AGED ABOUT- 63 YRS, OCC- BUSINESS, R/O. D.NO. 15/117-A, VICTORIA PETA, ADONI, KURNOOL DISTRICT, ANDHRA PRADESH, 518301.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, . REP.BY ITS PRINCIPAL SECRETARY, TRANSPORT DEPARTMENT, SECRETARIATE AMARAVATI, GUNTUR DISTRICT.

2. STATE BANK OF INDIA, REP BY ITS AUTHORISED OFFICER, REGISTERED OFFICE, GH ROAD, ADONI, 467 GHOSHA HOSPITAL ROAD, ADONI KURNOOL DISTRICT.

3. THE REGIONAL TRANSPORT AUTHORITY, ADONI, KURNOOL DISTRICT.

4. PEPAKAYALA SRINIVASULU, S/O. P. CH. VENKATA RAO, AGED 48 YEARS, R/O. D. NO. 28-1574-A, NEAR GOODS SHED, R.S. ROAD, NANDYAL, NANDYAL DISTRICT. R4 IS IMPLEADED AS PER COURT'S ORDER DT. 20/12/2024 IN IA 3/2024.

...RESPONDENT(S):

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 may be pleased to issue any writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the

2nd respondent in not allowing the petitioner to clear the outstanding loan amount for vehicle loan Account No. 39127412549 and thereby issuing letter dt.04.04.2024 and the notice dt.20.06.2024 issued by the 3rd respondent for transfer of ownership of vehicle without considering the petitioners reply dt.08.07.2024 is illegal, arbitrary and violative of article 14 and 300-A of the constitution of India and to consequently direct the 2nd respondent to receive the demand draft no 147983 dated 4-03-2024 towards clearance of outstanding loan amount and to release the vehicle bearing No. AP-39 EA-3699 by closing the loan Account No. 39127412549 and set aside the notice issued by the respondent No.2 dated 20-06-2024 and to pass

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 may be pleased to direct the respondent No.2 to forthwith release the vehicle bearing No. AP 39 EA 3699 by receiving the Demand Draft No. 147983 dated 4-03-2024 drawn on Central Bank of India, Adoni Branch and further direct the respondent No.3 not to effect the transfer of vehicle bearing No.AP-39 EA-3699 in the name of any third person pending disposal of the Writ Petition and pass

IA NO: 2 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 Pleased to Vacate the Interim order Dated 09-08-2024 in Writ Petition Number 17650 of 2024 , with costs

IA NO: 3 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 pleased to implead the Proposed Respondent No.4 herein as Party Respondent No.4 in W.P.No. 17650/2024 and pass

IA NO: 4 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 pleased to vacate the Interim Order, dt.9.8.2024 passed in I.A.No.1/2024 in W.P.No.17650/2024 and pass

Counsel for the Petitioner:

1.GRANDHI PRIYANKA

Counsel for the Respondent(S):

1.S SATYANARAYANA MOORTHY

2.SODUM ANVESHA

3.GP FOR TRANSPORT

The Court made the following:

::ORDER::

The above writ petition has been filed to declare the action of respondent No.2 in not allowing the petitioner to clear the outstanding loan in respect of vehicle loan account No.39127412549; the letter dated 04.04.2024 and notice dated 20.06.2024 issued by respondent No.3 for transfer of ownership of the vehicle without considering the petitioner's reply dated 08.07.2024, as illegal and arbitrary.

2. Heard Ms. Priyanka, learned counsel for the petitioner; Sri Rasheed, learned Assistant Government Pleader for Transport, for respondents 1 and 3; Sri S. Satyanarayana Moorthy, learned standing counsel for respondent No.2 and Smt. Sodum Anvesha, learned counsel for respondent No.4.

3. Initially, the writ petition was filed against respondents 1 to 3. Respondent No.4, the auction purchaser, filed I.A.No.3 of 2024 to implead him as a party respondent to the writ petition. The I.A. was allowed on 20.12.2024, and accordingly, the auction purchaser came on record as respondent No.4.

4. The averments of the writ affidavit, in brief, are that the petitioner, after obtaining a loan of Rs.15,00,000/- from respondent No.2 bank, vide loan account No. 39127412549 purchased a vehicle bearing No.AP 39 EA 3699 under 'hypothecation'. The petitioner made certain payments, and due to pandemic and drought conditions, the petitioner failed to pay the instalments regularly, and hence, the loan account was declared as 'NPA' on 01.04.2023.

The vehicle was taken possession of by the bank on 08.08.2023. A sale notice dated 27.02.2024 was issued proposing to conduct an auction on 11.03.2024. Respondent No.2 estimated the value of the vehicle at Rs.7,00,000/-.

Challenging the said notice, dated 27.02.2024, the petitioner filed W.P.No.6223 of 2024. On the submission made by learned counsel for the petitioner that it was informed that the auction was not conducted on 11.03.2024, for want of bidders, the writ petition was closed, giving liberty to the petitioner to avail appropriate remedy, if a new cause of action arises.

b) The petitioner approached respondent No.2 with demand drafts, dated 04.03.2024, for Rs.7,00,000/-.

Respondent No.2, without accepting the demand draft, is proceeding to conduct an auction. The petitioner made a representation on 03.04.2024, and respondent No.2 sent a reply on 04.04.2024, intimating the petitioner that the auction was conducted on 11.03.2024. However, the said reply was not communicated to the petitioner till notice, dated 30.06.2024 was issued by respondent No.3.

Respondent No.3 issued notice under Form 37, calling upon the petitioner to surrender the certificate of registration. Aggrieved by the said action, the above writ petition is filed.

5. A counter affidavit was filed on behalf of respondent No.2. It was contended, *inter alia*, that the loan was sanctioned on 07.02.2020, and since the petitioner failed to pay the instalments regularly, the account was declared as NPA on 01.04.2023. An auction notice was issued on 27.02.2024, the auction was conducted on 11.03.2024 and knocked down for an amount of Rs. 7,05,000/-.

The total due amount is Rs.9,84,924/-.

The vehicle bearing No.AP 39 EA 3699 was involved in an accident in the year 2023 and was given for repairs. An amount of Rs. 1,20,625/-, incurred to repair the vehicle, has not been paid, and the vehicle is in the custody of the KIA showroom. The officials of the bank informed the showroom about the auction, and the showroom management expressed no objection to handing over the vehicle if the bill is cleared.

b) Regarding W.P.No.6223 of 2024, and the order passed therein, it was contended that, on verification of the High Court website, it came to know that W.P.No.6223 of 2024 was filed on 06.03.2024; listed before learned Single Judge on 12.03.2024; and at the request of learned counsel for the petitioner, it was listed before the Division bench, on 19.03.2024. On the representation made by the learned counsel for the petitioner that the auction was not conducted on 11.03.2024, the said writ petition was closed, giving liberty to the petitioner to avail an appropriate remedy. But, the e-auction was conducted on 11.03.2024 and two bidders participated. Respondent No.4 became the highest bidder and paid the entire amount.

c) A reply was given to the petitioner on 04.04.2024, intimating about the auction conducted on 11.03.2024 and creation of a third-party interest. The appraiser of respondent No.2 approached respondent No.3 for the transfer of the ownership of the vehicle in the name of the auction purchaser. However, due to the interim order granted on 09.08.2024, further steps have not been taken. Eventually, prayed to dismiss the writ petition.

6. The auction purchaser filed a separate counter affidavit. It was pleaded about the purchase of the vehicle through auction and the payment of the entire amount.

7. An additional affidavit was filed by the petitioner, by annexing copies of two demand drafts for Rs.70,000/- and Rs.9,80,000/- and contended that the petitioner is ready and willing to pay the interest at 12% per annum in favour of the auction purchaser.

8. The auction purchaser filed a reply affidavit expressing disinclination to accept the petitioner's proposal.

9. Learned counsel for the petitioner, learned standing counsel for respondent No.2 and learned counsel for respondent No.4 reiterated the

contentions as per the averments made in the writ affidavit, additional affidavit and respective counter affidavits.

10. The writ petition was filed on 09.08.2024, in pursuance of form No.37 dated 20.06.2024 issued by respondent No.3, directing the petitioner to surrender the certificate of registration of the subject vehicle.

11. As narrated supra, e-auction of the subject vehicle was conducted on 11.03.2024, and respondent No.4 emerged as the successful bidder and the entire amount was deposited on the same day.

12. As seen from the order dated 19.03.2024 in W.P.No.6223 of 2024, none appeared for the respondents. It seems the learned counsel for the petitioner brought to the notice of the Court about the non-conducting of the auction on 11.03.2024 for want of bidders, and the same was recorded. Liberty was given to the petitioner to avail appropriate remedy. Thereafter, by letter dated 04.04.2024, the petitioner was informed about the e-auction conducted on 11.03.2024 and payment of the entire amount by the successful bidder on 12.03.2024.

13. At the hearing on a previous occasion, learned counsel for the petitioner, at one stage, contended that the learned counsel appearing for the bank represented in W.P.No.6223 of 2024 and sought time to get that information; however, could not produce any proof to that effect.

14. From the above facts, this Court presumes that the petitioner got knowledge about the auction, if not on 11.03.2024, at a later date, through Ex.P6 letter, dated 04.04.2024. The petitioner is made aware of the auction, on a second occasion, by proceedings, dated 20.06.2024, of respondent No.3. The petitioner filed the above writ petition on 09.08.2024.

15. It is not the case of the petitioner that respondent No.2 committed any illegality in conducting the auction, and hence, the auction is liable to be set aside. In the absence of such a plea and supporting proof, this Court has no

other option except to conclude that respondent No.2 conducted the e-auction by adhering to the procedure. Respondent No.4 became the successful bidder, and the entire amount was paid by respondent No.4 on 12.03.2024.

16. It is pertinent to mention here that the vehicle met with an accident and has been in the KIA showroom for a considerable time (till date).

17. The petitioner's grievance, as seen from the prayer, is that respondent No.2 is not allowing the petitioner to clear the outstanding amount. In fact, it is a factually incorrect statement, given the developments discussed supra. Of course, the petitioner filed two demand drafts along with an additional affidavit and also made averments in the affidavit that he will pay interest at 12%. However, in the absence of any illegality in the e-auction conducted and creation of a right in favour of a third party, the e-auction cannot be set aside.

18. Viewing the issue from another perspective, the vehicle was hypothecated with the Bank. Section 2(n) of the SARFAESI Act, defines that 'Hypothecation' means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property.

19. Chapter III, Section 13 of the SARFAESI Act deals with the Enforcement of security interest. Section 13(8) of the SARFAESI Act was substituted by Act 44 of 2016 w.e.f. 01.09.2016. It reads as follows:

13(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—
(emphasis is added)

- (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
- (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

20. The Hon'ble Apex Court in **Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.**¹, considered the scope of Section 13(8) of the SARFAESI Act and observed as under at para 110.3:

“110.3. In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. **However, the amended provisions of Section 13(8) of the SARFAESI Act make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules.** In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser. (emphasis is added)

21. In the case at hand, the auction was conducted according to a hypothecation agreement, after declaring the loan account as NPA, and a third-party interest has already been created. A mortgage is in respect of immovable property, and hypothecation is in respect of movable property.

¹ (2024) 2 SCC 1

Since the provisions are analogous, this Court relied upon the judgment referred to supra wherein the scope of Section 13(8) of the SARFAESI Act was considered. The case at hand, since the e-auction was completed, in the absence of any irregularity or fraud, while exercising the jurisdiction under Article 226 of the Constitution of India, in the considered opinion of this Court, it cannot be interdicted.

22. In K. Kumara Gupta v. Sri Markendaya & Sri Omkareswara Swamy Temple², the Hon'ble Apex Court considered the scope of interference by the Courts in the public auction and, while reversing the judgement of the Division Bench of the Andhra Pradesh High Court, observed as under:

14. Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction-sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of the highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer.

16. It is also required to be noted that the sale was confirmed in favour of the appellant by the Commissioner, Endowments Department after obtaining the report of the Assistant Commissioner. Therefore, we are of the opinion that in the aforesaid facts and circumstances of the case, the High Court ought not to have ordered re-auction of the land in question after a period of 23 years of confirmation of the sale and execution of the sale deed in favour of the auction-purchaser by observing that the value of the property might have been much more, otherwise, the object and purpose of holding the public auction and the sanctity of the public auction will be frustrated. Unless there is concrete material and it is established

² (2022) 5 SCC 710

that there was any fraud and/or collusion or the land in question was sold at a throwaway price, the sale pursuant to the public auction cannot be set aside at the instance of strangers to the auction proceeding.

17. The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throwaway price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction. After the public auction is held and the highest bid is received and the property is sold in a public auction in favour of the highest bidder, such a sale cannot be set aside on the basis of some offer made by third parties subsequently and that too when they did not participate in the auction proceedings and made any offer and/or the offer is made only for the sake of making it and without any serious intent. In the present case, as observed hereinabove, though Shri Jagat Kumar immediately after finalising the auction stated that he is ready and willing to pay a higher price, however, subsequently, he backed out. If the auction-sale pursuant to the public auction is set aside on the basis of such frivolous and irresponsible representations made by such persons then the sanctity of a public auction would be frustrated and the rights of a genuine bidder would be adversely affected.

23. The other issue, incidentally, to be considered is whether the law prevails over equity or equity prevails over the law. The answer to the question is no longer *res integra*.

24. In **National Spot Exchange Ltd. v. Dunar Foods Ltd. (Resolution Professional) [National Spot Exchange Ltd. v. Dunar Foods Ltd. (Resolution Professional)]**³, after referring to a catena of its other judgments, it was held that where the law is clear, the consequence thereof must follow. The High Court has no option but to implement the law.

³ (2022) 11 SCC 761

25. In **BSNL v. Mishri Lal**⁴, it was observed that the law prevails over equity if there is a conflict. It is further observed that equity can only supplement the law and not supplant it.

26. In **Raghunath Rai Bareja v. Punjab National Bank**⁵, the Hon'ble Apex Court in paras 30 to 35 considered the earlier judgements, and held as under:

“30. Thus, in *Madamanchi Ramappa v. Muthaluru Bojjappa* [*Madamanchi Ramappa v. Muthaluru Bojjappa*, 1963 SCC OnLine SC 36 : AIR 1963 SC 1633] (vide para 12) this Court observed : (AIR p. 1637)

“12. ... what is administered in courts is justice according to law, and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law.”

31. In *Council for Indian School Certificate Examination v. Isha Mittal*⁶ it was observed:

“4. ... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.”

32. In *P.M. Latha v. State of Kerala*⁷ it was observed

“13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.”

33. In *Laxminarayan R. Bhattad v. State of Maharashtra*⁸ it was observed:

“73. It is now well settled that when there is a conflict between law and equity, the former shall prevail.”

34. In *Nasiruddin v. Sita Ram Agarwal*⁹ it was observed:

⁴ (2011) 14 SCC 739

⁵ (2007) 2 SCC 230

⁶ (2000) 7 SCC 521]

⁷ (2003) 3 SCC 541

⁸ (2003) 5 SCC 413

⁹ (2003) 2 SCC 577

“35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.”

35. In *E. Palanisamy v. Palanisamy*¹⁰ it was observed :

Equitable considerations have no place where the statute contained express provisions.”

27. Thus, from the conspectus of the above authorities, it is clear that the law prevails over equity. The contention of the learned counsel for the petitioner that the petitioner will deposit the amount with 12%, on the ground of equity, this Court is not persuaded by the said submission, given the authoritative pronouncements referred to supra.

28. Given the above facts and circumstances of the case, this Court does not find any merit in the writ petition and the same is liable to be dismissed.

29. Hence, this writ petition is dismissed. No costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE SUBBA REDDY SATTI

Date: 01.07.2025
IKN

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

WRIT PETITION NO: 17650/2024

Date: 01.07.2025
IKN