



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 23300 OF 2025 (GM-DRT)

BETWEEN:

MR. ASHOK KUMAR N.,
S/O. MR. V.K. NAGARAJ,
AGED ABOUT 40 YEARS,
NO.19, 7TH CROSS, 1ST PHASE,
MANJUNATHANAGAR,
RAJAJINAGAR,
BENGALURU-560 010.
(THIRD PARTY/AUCTION PURCHASER)

...PETITIONER

(BY SRI. RAJESH MAHALE, SENIOR ADVOCATE FOR
SRI. V. MOHAN, ADVOCATE)

AND:

KARNATAKA BANK,
ASSET RECOVERY MANAGEMENT BRANCH,
1ST FLOOR, FKCCI BUILDING,
KEMPEGOWDA ROAD,
BENGALURU -560 009.

REPRESENTED BY ITS



AUTHORIZED OFFICER,
ASSISTANT GENERAL MANAGER.
(SECURED CREDITOR).

...RESPONDENT

(BY SRI. SHYAMA PRASADA K.V., ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENT BANK TO REFUND THE PETITIONERS EARNEST MONEY DEPOSIT OF RS. 23,50,000/-(RUPEES TWENTY THREE LAKHS FIFTY THOUSAND ONLY) WITH 24PERCENT INTEREST PER ANNUM FROM THE DATE OF DEPOSIT TILL REALIZATION, HOLDING THAT THE LETTER OF COMMUNICATION BEARING NO. ARMB/BNG/PF-729/OR/67/2025-2026 DATED 30.06.2025 ISSUED BY THE RESPONDENT BANK FORFEITING THE PETITIONERS EMD AS SHOWN IN ANNEXURE-A AS ILLEGAL AND ARBITRARY IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR DISMISSAL, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

The present writ petition is filed seeking the following prayer:

"WHEREFORE, it is respectfully prayed that this Hon'ble Court be pleased,

(a) Issue Writ of Mandamus directing the Respondent Bank to refund the Petitioner's Earnest Money Deposit of Rs.23,50,000/- (Rupees Twenty Three Lakhs Fifty Thousand Only) with 24% interest per annum from the date of deposit till realization, holding that the letter of communication bearing No.ARGB/BNG/PF-729/OR/67/2025-2026 dated 30.06.2025 issued by the Respondent Bank forfeiting the Petitioner's EMD as shown in ANNEXURE-A as illegal and arbitrary in the interest of justice and equity;

(b) To grant such other reliefs/orders which this Hon'ble Court deems fit and proper under the facts and circumstances stated above in the interest of justice and equity."

2. The respondent before this Court is Karnataka Bank Limited. It is the case of the petitioner that he is the auction purchaser, he had paid the Earnest Money Deposit of an amount of Rs.23,50,000/- and requested the bank to give the copies of the property title deeds to the petitioner. On the very same day, the petitioner handed over the property related documents to his legal advisor for scrutiny of title and search of encumbrance. The petitioner participated in the auction sale conducted by respondent/bank on 26.06.2025 and was held as



a successful bidder quoting highest price bid of Rs.2,61,00,000/-. On the very same day, the petitioner received a mail from the respondent/bank intimating that the petitioner is the successful bidder and directed the petitioner to deposit 25% of the bid amount i.e., Rs.65,25,000/- which is inclusive of 10% EMD, within next day and the remaining 75% within 15 days. On 21.06.2025, the petitioner was shocked to know that there is a partition suit pending vide O.S.No.982/2025 before the City Civil and Sessions Judge, Bangalore and the respondent/bank is also a party to the said suit, who had filed vakalath and appeared before the Trial Court. The petitioner, who had long association with respondent/bank contacted the bank and questioned about vital information of known encumbrance not revealed in the auction sale notice dated 02.06.2025. The petitioner had also written a letter stating that had he known this encumbrance on the auction property, he would not have ventured on the auction. He also wrote a letter on 01.07.2025 about the suppression of the loan encumbrance and he had also requested for return of EMD amount. The respondent/bank wrote a letter dated 30.06.2025 to the petitioner, forfeiting the Earnest Money



Deposit of the petitioner of Rs.23,50,000/- and issued another auction sale notice without even disclosing the facts of pending litigation.

3. Learned Senior Counsel appearing for the petitioner submits that this act of the respondent is arbitrary and they cannot sell the property when they know about the encumbrance of the said property. It is submitted that when there is fraud on the part of the respondent/bank, they cannot forfeit the amount and had this fact been disclosed, he would have not participated in the auction. It is submitted that when this matter came up on the first day, this Court had expressed the view that in the light of the order passed in the case of **Sri. Gautham Vs. Karnataka Bank Ltd.**,¹ the writ petition is not maintainable. Learned Senior Counsel also points out that the petitioner has no other alternative remedy as forfeiture of the amount is not a measure as per Section 17 of SARFAESI Act and he cannot approach the DRT. It is submitted that the writ petition is maintainable before this Court. It is further submitted that in the case of **S. Shobha Vs. Muthoot Finance**

¹ 2013 AIR SCW 2545



Ltd.² and in the case of **Phoenix ARC Private Limited Vs. Vishwa Bharathi Vidya Mandir and others**³ and also in the case of **Sri. Gowtham Vs. Karnataka Bank Ltd.**,⁴ the Hon'ble Apex Court and the Co-ordinate Bench of this Court had held that the writ petition is not maintainable against the private banking company also the asset re-construction company and the private finance company. It is submitted that in all those cases they are the borrowers, the petitioner is only questioning the action of the respondents in forfeiting the EMD amount. It is further submitted that when the action of the respondent/bank is arbitrary, just because it is a private bank cannot be a reasons for this Court to refuse to exercise the jurisdiction under Article 226 of the Constitution of India and the writ petition is maintainable.

4. Learned Senior Counsel appearing for the petitioner has made submissions on the maintainability of the writ petition. He had relied on the judgment of the Hon'ble Apex Court in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust**

² 2025 Supreme (SC) 240

³ (2022) 5 Supreme Court Cases 345

⁴ 2013 AIR SCW 2545



and Other Vs. V.R. Rudani and other⁵. He had relied on para No.20 which reads thus:

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

5. Learned counsel appearing for the respondent/bank submits that the Hon'ble Apex Court in the case of **Agarwal**

⁵ (1989) 2 Supreme Court Cases 691



Tracom Pvt. Ltd. Vs. Punjab National Bank and Others.⁶

had held that even on the forfeiture of the EMD amount the aggrieved party can go before the Tribunal under Section 17 of SARFAESI Act. He had relied on para Nos.34 and 35 of the said judgment which reads thus:

34. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.

35. The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the

⁶ Civil Appeal No.19847/2017 arising out of Slp(C) No.33514/2016



observations made by this Court and the High Court in the impugned judgment.

6. Having heard the learned counsels on either side, perused the material on record. In the light of the law laid down in **Gowtham**'s case referred supra the writ petition is not maintainable against the Karnataka Bank. The consistent view is taken, particularly under the SARFAESI proceedings in **Shobha**'s case and in **Vishwabharathi**'s case referred supra, against the private finance company the writ petition is not maintainable as such, this Court is of the view that a writ petition against Karnataka Bank is not maintainable.

7. Then coming to the submission with regard to the petitioner cannot go before the Debt Recovery Tribunal, as forfeiture of the EMD amount is not a measure as per the SARFAESI Act, the said submission is also not available to the petitioner in the light of the judgment in the case of **Agarwal Tracom Pvt. Ltd.**, referred supra and the petitioner can always question it before the Debt Recovery Tribunal. In that view of the matter, this Court is passing the following:



ORDER

- i. Accordingly, the writ petition is ***disposed of*** giving liberty to the petitioner to avail the appropriate remedy before the Debt Recovery Tribunal.
- ii. The petitioner shall have the benefit of Section 14 of the Limitation Act, 1963.
- iii. All I.As., in the writ petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**