

ITEM NO.101

COURT NO.5

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1388/2007

M/S. SHUBHAM ENTERPRISES

Appellant(s)

VERSUS

K. SRINIVAS RAO & ORS.

Respondent(s)

(With appln(s) for bring on record subsequent event and permission to file additional documents and office report)

WITH

CONMT.PET.(C) No. 62/2007 In C.A. No. 1388/2007

(With appln.(s) for Office Report)

C.A. No. 3389/2007

(With appln.(s) for permission to file additional documents and permission to file rejoinder affidavit and Office Report)

Date : 27/08/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Appellant(s)

Mrs. Sudha Gupta ,Adv.

Mr. Raju Ramchandran, Sr. Adv.

Mr. Harin Raval, Sr. Adv.

Mr. M. Srinivas R. Rao, Adv.

Mr. Abid Ali Beeran P., Adv.

Ms. Diya Anand, Adv.

Mr. L. Venkateshwar Rao, Adv.

Mr. J. Govardhan Reddy, Adv.

Mr. Pranab Kumar Mullick ,Adv.

Ms. Soma Mullick, Adv.

For Respondent(s)

Mr. Anil Kumar Sangal ,Adv.

Mr. Siddharth Sangal, Adv.

Mr. Dushyant A. Dave, Sr. Adv.

Mr. Parag Tripathi, Sr. Adv.

Mr. S. Uday Kumar Sagar, Adv. '

Ms. Bina Madhavan, Adv.

Mr Shivendra Singh, Adv.

M/s. Lawyer S Knit & Co ,Adv.

UPON hearing the counsel the Court made the following

O R D E R

CIVIL APPEAL NO.1388 & 3389 of 2007

The appeals stand disposed of in terms of signed order.

CONTEMPT PETITION NO.62 OF 2007 IN CIVIL APPEAL NO.1388 OF 2007

The contempt petition is closed in terms of signed order.

(Neeta)
Sr. P.A.
(Signed order is placed on the file)

(Usha Sharma)
COURT MASTER

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1388 OF 2007

M/S. SHUBHAM ENTERPRISES

Appellant(s)

VERSUS

K. SRINIVAS RAO & ORS.

Respondent(s)

WITH

CONTEMPT PETITION NO.62 OF 2007 IN CIVIL APPEAL NO.1388 OF 2007

WITH

CIVIL APPEAL NO.3389 OF 2007

O R D E R

These appeals have been preferred by appellants against common judgment and order dated 17th January, 2007 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No.966 of 2006. By the impugned judgment, the High Court declared that the auction held by respondent no.4 on 18th October, 2005 and the sale certificate issued in favour of appellant-Shubham Enterprises are nullity and quashed the auction sale and sale certificate. Respondent no.2-IndusInd Bank Ltd. and respondent no.4, were allowed to initiate proceedings for recovery of the dues passed by the Presiding Officer, Debt Recovery Tribunal, Hyderabad.

The appellants have challenged the impugned judgment mainly on the ground of existence of alternative remedy under Rule 60 or

61 of the 2nd Schedule of Income Tax Act, 1961. Reliance was placed on this Court's decisions in '*United Bank of India Vs. Satyawati Tondon & Others*', reported in 2010 (8) SCC 110, '*Kanaiyalal Lalchand Sachdev & Others Vs. State of Maharashtra & Others*' reported in 2011 (2) SCC 782 and '*General Manager, Sri Siddeshwara Cooperative Bank Ltd. & Another Vs. Iqbal & Others*' reported in 2013 (10) SCC 83.

Learned counsel appearing for the respondents submits that the High court has power under Article 226 to decide the dispute arising out of Recovery of Debts due to Banks and Financial Institutions Act, 1993. He further submits that if the respondents-writ petitioners are allowed to deposit only principal amount then they are ready to move an appeal under Rule 61 of 2nd Schedule of the Income Tax Act, 1961.

On hearing the learned counsel for the parties and in view of decisions rendered by this Court in '*United Bank of India*' (supra), '*Kanaiyalal Lalchand Sachdev & Others*' (Supra) and '*General Manager, Sri Siddeshwara Cooperative Bank td. & Another*' (supra), we are of the view that the High Court instead of entertaining the writ petition under Article 226 should have allowed the respondent no.1-writ petitioner to move before the certificate officer under Rule 60 or 61 of the 2nd Schedule of Income Tax Act, 1961.

When there is a disputed question of fact and the party challenging the sale is required to deposit pre-requisite amount for setting aside the sale, the aggrieved person should have been asked to adhere to the provision of law under which it is

mandatory to deposit the pre-requisite amount.

For the reasons aforesaid, we set aside the impugned order 17th January, 2007 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No.966 of 2006 and without expressing opinion on merit, allow the aggrieved person including the respondents-writ petitioners to file application under Rule 61 of 2nd Schedule of the Income Tax Act, 1961. It will be also open to move before the Debt Recovery Tribunal under Section 30 of the D.R.T. Act, if such application is maintainable.

As the period of limitation has already been crossed, we allow the respondents-writ petitioners to file such application within four weeks with 50% of the certificate amount including interest. In such a case the competent authority will decide the same on merit without compelling the respondents to deposit the total amount.

The appeals stand disposed of with aforesaid observations.

CONTEMPT PETITION NO.62 OF 2007 IN CIVIL APPEAL NO.1388 OF 2007

In view of the orders passed in the appeals aforesaid, the contempt petition does not survive, it is closed.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(PRAFULLA CHANDRA PANT)

NEW DELHI;
AUGUST 27, 2014