

APHC010177252026



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

[3575]

MONDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

WRIT PETITION NO: 8885/2026

Between:

1. MS CONSTRUCTIONS, REPRESENTED BY ITS MANAGING PARTNER, MAHABOOB SUBHANI KHAN S/O ISMAIL KHAN, R/O 4TH FLOOR, SRI NIVASAM, DOOR NO 10-27-1 WALT AIR UPLANDS, SIRIPURAM FACOR LAYOUT, VISAKHAPATNAM 530 003.
2. MAHABOOB SUBHANI KHAN, S/O ISMAIL KHAN, RESIDENT OF D.NO. 10-51-12/7, PRAGATI ROYAL APARTMENTS, FLAT NO. 1C, NEAR LATHA HOSPITAL KAILAS METTA, VISAKHAPATNAM 530 003.
3. SMT MUKTIYAR BEGUM, W/O ISMAIL KHAN R/O 6-165, VUYYURU, KRISHNA DISTRICT.

...PETITIONER(S)

AND

1. UNION BANK OF INDIA, REPRESENTED BY ITS AUTHORIZED OFFICER UNDER THE SARFAESI ACT, ASSET RECOVERY BRANCH, DOOR NO.26-15-150, ANDHRA BANK BUILDING, CHANGALRAOPET VISAKHAPATNAM 530 001.
2. UNION BANK OF INDIA, REP BY ITS MANAGING DIRECTOR AND CHIEF EXECUTIVE DIRECTOR UNION BANK BHAVAN, 239, VIDHAN BHAVAN MARG, NARIMAN POINT, MUMBAI-400021, MAHARASHTRA INDIA.

...RESPONDENT(S):

CORAM:- HON'BLE MRS JUSTICE LISA GILL

HON'BLE SRI JUSTICE NINALA JAYASURYA

Present:- Mr. R. Gopi Mohan, Advocate represented
Mr. G.V.V.S. Vara Prasad, Advocate for petitioners,
through virtual mode.

Ms. V. Dyumani, Advocate for respondent Nos.1 &
2, through virtual mode.

LISA GILL,J.

1. Prayer in this writ petition reads as under:

“It is therefore prayed that Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring action of respondent No.2 for obtaining physical possession of site measuring Ac.1999.98 Sq. yards and flat No.1C in 1999.98 Sy. yards in plot Nos.5, 6 & 7, Block No.9, T.S.No.78 of Waltair Ward, Vishakapatnam Municipality, Vishakapatnam on 07.03.2026 without giving any notice to petitioner and bringing said property to e-auction vide notice dated 11.03.2023 published in daily news papers i.e., Enadu, Sakshi & Times of India and subsequent e-auction notification dated 30.03.2026 by ignoring pendency of S.A.No.202 of 2025 & S.A.No.461 of 2023 on the file of Debts Recovery Tribunal, Visakhapatnam, as illegal, arbitrary, unconstitutional and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently direct learned Debts Recovery Tribunal Visakhapatnam to hear stay

applications I.A.No.1342 of 2026 & I.A.No.1159 of 2026 in S.A.No.202 of 2025 expeditiously and pass such other order or orders as this Hon'bel Court may deem fit and proper in the interest of justice.”

2. It is pleaded in writ petition that 1st petitioner Company, availed four loan facilities, i.e., of Rs.3.20 crores, Rs.20,14,000/-, Rs.60,00,000/-, and Rs.48,39,000/- during the year 2020. It is submitted that 1st petitioner is engaged in construction activity dealing with Government works, being a class-I contractor.

3. Learned counsel for petitioners submits that there was negligible default on the part of petitioners due to a small accounting glitch. Petitioners' account was declared Non-Performing Asset (NPA) on 28.10.2023 in an illegal manner; notice under Section 13(2) of the SARFAESI Act was issued asking petitioners to deposit entire amount due under all the four accounts. Objections were filed by petitioners, clearly indicating *inter alia* that a message had been sent to petitioners on 28.01.2023 for deposit of a sum of Rs.3,53,800/-, and an amount of Rs.3,60,000/- was deposited; however, account was declared NPA on 28.01.2023 in an illegal manner.

4. Respondent Bank did not regularize the account and filed OA.No.658/2023, besides initiating coercive action under the

SARFAESI Act. Notice under Section 13(4) of the Act, for a sum of Rs.3,76,86,725/-, was issued. Thereafter, S.A.No.461 of 2023 was filed by petitioners before learned DRT, Visakhapatnam, seeking declaration of account as NPA, to be illegal as well as setting aside further proceedings arising therefrom. No stay was granted by learned DRT in favour of petitioners in S.A. No. 461 of 2023. S.A.No.202 of 2025 was subsequently filed challenging notices for e-auction issued by respondent Bank. Crl.M.P.No. 234 of 2025 was filed by Bank before learned Chief Metropolitan Magistrate, Visakhapatnam, seeking physical possession of property, and the same was ordered, though date of order is not mentioned in the writ petition.

5. I.A.No.3891 of 2025 in S.A.No.461 of 2023 and I.A.No. 3892 of 2025 in S.A.No.202 of 2025 were filed seeking interim relief and at the same time, petitioners approached respondent Bank for One Time Settlement (OTS) with an upfront amount of Rs.38.50 lakhs. Respondent Bank, on 17.10.2025, stated before learned DRT that OTS proposals were under consideration, upon which, further proceedings were stayed by learned DRT to facilitate compromise. It is submitted that petitioners had sought 120 days for complete settlement, but Bank, on 16.12.2025,

issued OTS sanction with a different payment schedule, which was not acceptable to petitioners.

6. Notice from Advocate Commissioner stating that he would execute warrant on 17.02. 2026 was received by petitioners on 09.02.2026. Efforts were made to seek extension of stay order earlier granted by learned DRT, but the same was not extended as it was found that fresh legal warrants had been obtained; Presiding Officer was on leave from 16.02.2026 to 20.02.2026. W.P.No.4592 of 2026 was then filed by petitioners seeking declaration of action of respondents in attempting to take forcible possession of residential property as illegal. Said writ petition was disposed of on 16.02. 2026, with operative part of the order reading as under:

“Considering that the learned Presiding Officer of the Tribunal is presently on leave, as also the consent of the learned counsels on either side, as aforesaid, we deem it appropriate to provide that the delivery warrant shall remain in abeyance, subject to the following conditions:

A) The petitioners shall deposit/pay a sum of Rs.1,67,50,000/- (Rupees One Crore Sixty Seven Lakhs Fifty Thousand only) with the respondent/Bank within a period of one week from today, i.e., on or before 23.02.2026.

b) In default of such payment within the stipulated time as aforesaid, the same delivery warrant shall be proceeded with and the advocate commissioner shall execute the same in accordance with law”.

7. Admittedly, amount in question in terms of order dated 16.02.2026 was not deposited by petitioners. Review petition, filed by petitioners in said writ petition, was dismissed by Division Bench of this Court on 27.02.2026, while specifically observing that there is a lack of bonafide on the part of petitioners, and noting that no part of order dated 16.02.2026 had been complied with in any manner. Physical possession of property, as per Crl.M.P.No.234 of 2025, was taken on 07.03. 2026. It is further submitted that I.A.Nos.1159, 1161 & 1162 of 2026 and I.A.Nos.1248, 1342, 1343 & 1389 of 2026 were filed in pending S.A.No.202 of 2025 and S.A.No.461 of 2023 seeking stay of e-auction, to restore physical possession of scheduled property, as well as preponement of hearing of pending securitization applications (SAs).

8. Learned counsel for petitioners submits that statutory remedy(ies) before DRT has/have become inefficacious. Declaration of account as NPA is absolutely illegal and arbitrary. Therefore, present writ petition should be allowed as prayed for.

9. Learned counsel for respondents, on advance notice, has opposed this petition, submitting that the only effort of petitioners is to delay proceedings in one way or the other. There is complete lack of bonafide on the part of petitioners, as is apparent from record. It is submitted that petitioners did not deposit amount in terms of order dated 16.02.2026 passed by this Court in W.P.No.4592 of 2026. S.A.'s filed by petitioners are still pending adjudication before learned DRT. Therefore, present writ petition deserves to be dismissed.

10. We have heard learned counsel for parties and have perused the file.

11. Availment of facilities by petitioners; their account being declared NPA on account of financial indiscipline; proceedings being undertaken under the SARFAESI Act; pendency of S.A. Nos.461 of 2023 and 202 of 2025; as well as non-compliance of order dated 16.02.2026 passed in W.P.No.4592 of 2026, and dismissal of review application in the said writ petition on 27.02.2026, are all a matter of record.

12. In given facts and circumstances, we are of the considered opinion that present writ petition is not entertainable in any manner. Petitioners seek same relief as had been sought in

earlier writ petition, though trying to give a different complexion to the controversy at hand. An indulgence had been shown by this Court on an earlier occasion to petitioners on 16.02.2026. There was admitted non-compliance thereof, besides dismissal of their review application seeking extension of time for deposit of amount vide order dated 27.02.2026.

13. In given facts and circumstances, we do not find any ground to interfere in this matter in exercise of jurisdiction under Article 226 of the Constitution of India. All arguments raised before us are very well without the realm of consideration by learned Tribunal. In case of any emergent situation, as is sought to be projected before us, it is open to petitioners to pursue appropriate remedy(ies) before learned DRT.

14. It is also pertinent to note that interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India in such like circumstances has to be minimal and actuated only in exceptional or extraordinary circumstances. Gainful reference can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010 (8) SCC 110, M/s. South Indian Bank Ltd. And others v. Naveen Mathew Philip and another, 2023 (2) RCR (Civil) 771**

and then in **PHR Invent Educational Society Versus UCO Bank and others, 2024 AIR (SC) 1893.**

15. Learned counsel for petitioners is unable to point out any such exceptional or extraordinary circumstance in the present factual matrix. No other arguments were raised.

16. Keeping in view facts and circumstances as above, present writ petition is dismissed without any order as to cost.

17. Pending applications, if any, are disposed of accordingly.

(LISA GILL)
JUDGE

(NINALA JAYASURYA)
JUDGE

Date: 06.04.2026
ANS

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HON'BLE MRS JUSTICE LISA GILL
HON'BLE SRI JUSTICE NINALA JAYASURYA

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