

**Court No. - 3**

**Case :-** WRIT - C No. - 41421 of 2023

**Petitioner :-** M/S Dileep Kirana Store Prop. Jagdish Prasad Dwivedi

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Rahul Singh, Kandarp Dwivedi

**Counsel for Respondent :-** CSC, Ramesh Kumar Shukla

**Hon'ble Siddhartha Varma, J.**

**Hon'ble Shekhar B. Saraf, J.**

1. Heard learned counsel for the petitioner; learned Standing Counsel and Sri Ramesh Kumar Shukla, learned counsel appearing for the Bank.

2. By means of the present writ petition, the petitioner has prayed for quashing the order dated 25.8.2023 passed by the District Magistrate, Banda as also the order dated 3.11.2023 issued under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "2002 Act") by the respondent no.4.

3. Learned counsel for the petitioner submits that a loan was taken by the petitioner. He had also mortgaged a property measuring 0.0818 sq. feet situated behind Sethu Talaiya Kali Mandir, District Banda. Learned counsel has further pointed out that when certain payments of the loan installments were not made, the creditor Bank initiated proceedings of recovery under the 2002 Act by issuing notices dated 1.9.2017 and 2.11.2019 under sections 13(2) and 13(4) of the Act respectively and demanded a sum of Rs.5,78,586/- alongwith interest and other charges. Learned counsel has drawn the attention of the Court to the impugned

notice dated 3.11.2023 by which the respondent-Bank desires to take symbolic possession of the mortgaged property and would be strongly taking further steps to recover the dues by auctioning the mortgaged property. He further submits that even though an order under section 14 of the 2002 Act has been passed and that order has been challenged, the petitioner is ready and willing to pay the entire amount. He also submits that no date for auction has been fixed.

4. At the very outset learned counsel for the petitioner has proposed to deposit 25% of the outstanding amount within a period of one month from today, with an undertaking that the remaining amount shall be paid in next three equal monthly installments.

5. Learned counsel for the Bank does not dispute the fact that pursuant to the recovery proceedings including the impugned notice dated 3.11.2023 no auction proceedings have been fixed. He, however, states that the Bank has no objection if the borrower is willing to clear the debt by paying 25% of the outstanding amount within a period of one month from today and remaining amount in next three equal monthly installments.

6. In view of the above stand of the learned counsel for the parties, at this stage, without looking into the merits of the case, we deem it appropriate to afford an opportunity to the borrower to clear the debt by paying 25% of the outstanding amount within a period of one month from today, and the remaining amount in next three equal monthly installments. The outstanding debt be directed to be paid with up-to-date interest.

7. Needless to say that when the last installment is paid by the

petitioner, the bank shall inform the petitioner the interest amount which would have accrued by the last date of payment and it shall be paid along with the last installment.

8. We clarify that, if, the amount as has been promised by the petitioner is not deposited as per the undertaking then the Bank shall be free to recover the debt pursuant to the impugned notice.

9. With these observations the writ petition is disposed of.

**Order Date :- 1.12.2023**

vkj

(Shekar B. Saraf, J.)

(Siddhartha Varma, J.)