

Court No. - 3

Case :- WRIT - C No. - 40631 of 2023

Petitioner :- Bhola Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vivek Singh

Counsel for Respondent :- C.S.C,Parshuram Chaubey

Hon'ble Siddhartha Varma,J.

Hon'ble Shekhar B. Saraf,J.

1. Heard learned counsel for the petitioner and Sri Parshuram Chaubey, learned counsel appearing for the Bank..

2. By means of the present writ petition, the learned counsel for petitioners has prayed for quashing demand notice dated 03.01.2022 issued under Sub-section (8) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") by the respondent no. 3.

3. Learned counsel for the petitioners submits that a loan was taken by the petitioner. He had also mortgaged a property bearing Chak No. 117 area 108 Sqr. Mtrs. situated at Village Bhadaura, Pargana Jamaniya, Tehsil Sevrai, District- Ghazipur which was in the name of Sri Bhola Kumar S/o Ramkishun Bind. 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 SARFAESI Act by issuing notice dated 03.01.2022 under the SARFAESI Act and demanded a sum of Rs. 5,18,609.70/- alongwith interest and other charges. Learned counsel has drawn the attention of the Court to the impugned notice dated 03.01.2022 and asserted that the Bank has taken symbolic possession of the mortgaged property and would be strongly taking further steps to recover the dues by auctioning the mortgaged property.

4. Learned counsel for the petitioner has stated that the petitioner is ready to deposit the entire amount in four equal instalments. 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 four 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 03.01.2022 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 four 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 four 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 :- 28.11.2023

Sharad/-

(Shekhar B. Saraf,J.)

(Siddhartha Varma,J.)