THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No. 2849 of 2015

ORDER: (per Justice Ramesh Ranganathan)

The dispute in this writ petition relates to whether the time stipulated for considering the objections, filed under Section 13(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called 'the SARFAESI Act'), is mandatory or directory. Section 13(3-A) requires the objections to be considered, and the order communicated, within one week of receipt of the representation. This requirement is stated to have been subsequently amended to fifteen days. The petitioners submitted their objections on 28.08.2013, and have invoked the jurisdiction of this Court contending that their objections were not considered even till they filed the writ petition.

Mrs. V. Dyumani, learned counsel for the 1st respondent bank, has placed before this Court copies of the acknowledgment receipts, of the courier service, in support of her submission that the respondent bank has considered the objections, under Section 13(3A) of the SARFEASI Act, by their order dated 16.06.2014. Even if that be so, the objections were considered more than 9 months after they were submitted. Learned counsel would rely on a judgment of the Division Bench of the Bombay High Court, in **Clarity Gold Pvt. Ltd. v. State Bank of India**[1], in support of her submission that the time stipulated, for considering the objections, is only directory and not mandatory.

The consideration of the petitioners objections was more than 9 months after the objections were filed. There is also a dispute whether or not the order dated 16.06.2014 was communicated to the petitioners. It now transpires that proceedings under Section 13(4) of the SARFAESI Act were issued on 30.01.2015, against which the petitioners have a right of appeal, under Section 17 of the SARFAESI Act, to the Debt Recovery Tribunal. The 45 days period of limitation would expire by 16.03.2015. Counsel on either side would agree that the Debt Recovery Tribunal has the power to condone the delay in invoking its jurisdiction under Section 17 of the SARFAESI Act. Sri Sitaram Chaparla, Learned Counsel for the petitioner, would submit that, as a copy of the order dated 16.06.2014 was handed over to them only with the counter affidavit of the respondents, it may not be possible for the petitioners to invoke the jurisdiction of the Debt Recovery Tribunal before 15.03.2015. He would request one month time thereafter for the petitioners to file an application under Section 17 of the SARFAESI Act.

We consider it appropriate, in the facts and circumstances of the case, to permit the petitioners to invoke the jurisdiction of the Debt Recovery Tribunal, under Section 17 of the SARFAESI Act, before 31.03.2015. While all proceedings under the SARFAESI Act may go on, the respondents shall not confirm the sale till 15.04.2015. In case the petitioners do not invoke the jurisdiction of the Debt Recovery Tribunal before 31.03.2015, or if no interim orders are passed by the Debt Recovery Tribunal on its jurisdiction being invoked, it is open to the respondent bank to proceed against the secured asset, in accordance with law, after 15.04.2015.

The writ petition stands disposed of accordingly.

Miscellaneous petitions pending, if any, shall also stand disposed of. No order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

2nd March, 2015

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[1] AIR 2011 Bombay 42