THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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WRIT PETITION No.14389 of 2014

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ORDER: *(Per Hon'ble Sri Justice R.Subhash Reddy)*

In this writ petition, the petitioners have questioned the order dated 08.04.2014 in Appeal No.95 of 2013 passed by the Debts Recovery Appellate Tribunal, Kolkata, confirming the order dated 22.04.2013 passed in S.A.No.14 of 2013 on the file of the Debts Recovery Tribunal, Visakhapatnam.

The 1st petitioner is the husband of the 2nd petitioner. Both the petitioners have availed loan from the respondent-Bank. When they have committed default in repayment of the same, the respondent has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and issued demand notice under Section 13 (2) of the Act, demanding to pay an amount of Rs.24,13,729/- due as on 02.09.2011. Thereafter the respondent has issued possession notice, dated 14.03.2012, which was challenged by way of S.A.No.14 of 2013 before the Debts Recovery Tribunal, Visakhapatnam. The said S.A was dismissed by order dated 22.04.2013. As against the same, the matter was carried in appeal vide Appeal No.95 of 2013, under Section 18 of the Act, before the Debts Recovery Appellate Tribunal, Kolkata and the same also ended in dismissal.

In this writ petition, the only contention advanced by learned counsel for the petitioners is that the petitioners have availed loan of Rs.12,00,000/- only, but not Rs.23,00,000/- as stated by the respondent. The primary Tribunal and also the Appellate Tribunal have referred to the record, particularly loan application dated

20.07.2009 of the petitioners, sanction letter dated 10.10.2009, copy of the sale agreement dated 15.10.2009 entered between the 1st petitioner and the builder by name Smt B.Parameswari and also request letter dated 20.10.2009 of the petitioners, basing on which loan amount was disbursed by way of two demand drafts dated 23.10.2009 for Rs.11,00,000/- and Rs.12,00,000/-. It was held that the respondent Bank has disbursed total loan amount of Rs.23,00,000/-, but not Rs.12,00,000/- as claimed by the petitioners. Although it is contended by learned counsel for the petitioners that there is no reason for granting loan amount of Rs.23,00,000/- by securing the mortgage of the property valued at Rs.12,00,000/- only, it is not in dispute that the petitioners submitted their application for grant of loan and that, after receipt of sanction letter dated 10.10.2009, they have addressed a letter dated 20.10.2009 for disbursement of loan in favour of the builder, and thus, it cannot be said that the respondent-Bank has sanctioned loan of Rs.12,00,000/- only. From the documents which are discussed by the primary Tribunal and the Appellate Tribunal, it is clear that the petitioners are signatories to the loan application for grant of Rs.23,00,000/- and, only on authorization given by them, such loan amount was disbursed. In view of the same, the contention of learned counsel for the petitioners that the respondent Bank has advanced loan amount of Rs.12,00,000/- only, cannot be accepted.

For the aforesaid reasons and in view of the reasons recorded in the impugned order, we do not find any merit in the writ petition and the writ petition is accordingly dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

07th October, 2015

v v