

**HON'BLE SRI JUSTICE R. SUBHASH REDDY**  
**AND**  
**HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**WRIT PETITION No.16461 of 2015**

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**ORDER** : (Per Justice R. Subhash Reddy)

Petitioner is a Company, doing business in Marine products. This writ petition is filed, seeking directions by way of Mandamus, to declare the action of respondent-bank in not considering the petitioner's representation dated 27.05.2015, as unjust and arbitrary and to direct the respondent to consider deferment of auction of residential house bearing H.No.27-17-55/20-3/1, ASR Nagar, Ward No.36, Bhimavaram, West Godavari District.

2. Petitioner-Company has taken financial assistance from the respondent-bank by mortgaging the properties of its Directors and some third parties. When the petitioner has defaulted in paying the loan amount, respondent-bank has initiated proceedings under Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 and issued notice, dated 10.04.2015 under Section 13(2) of the said Act. A perusal of the notice indicate that there is a demand for clearing the entire dues amounting to Rs.7,36,85,453/- on or before 10.06.2015. On receipt of aforesaid notice, petitioner has filed a representation dated 27.05.2015, giving the schedule for re-payment of entire loan and also mentioned that the petitioner is prepared to pay immediately, 10% of the total loan. In response to the said representation, respondent-bank has sent e-mail dated 06.06.2015, which reads as under :

"Dear Sir,

Please refer to the discussions we had with you in Bhimavaram and your letter dated May 27, 2015 regarding clearance of overdues and sale of collateral properties. As discussed in the meeting you are requested to make an immediate payment of atleast 10% of the total overdues to SIDBI. On receipt of the amount, a proposal for deferment of action under SARFAESI would be sent our Head office for its consideration.

If you require any further clarification in the matter, you can visit our office or call us.

You are once again requested to accord top priority for clearance of dues of SIDBI.”

3. Now, it is contended by the learned counsel for petitioner that in view of financial stringencies, the petitioner is not in a position to pay 10% of the total overdues as mentioned in the e-mail communication dated 06.06.2015. It is further submitted that inasmuch as the Directors are using the property bearing H.No. 27-17-55/20-3/1, ASR Nagar, Ward No.36, Bhimavaram and the same is joint family property, directions be issued to defer auction of the residential house so as to enable the petitioner to mobilize funds and pay the same to the respondent-bank.

4. It is to be noticed that on issuance of notice under Section 13(2) of the Act, petitioner-Company itself has filed a representation offering to pay 10% of the total amount due and given the schedule for payment of entire loan amount. Even to construe such representation under Section 13(3A) of the Act, respondent-bank has already responded through e-mail communication dated 06.06.2015 and asked the petitioner to pay 10% of the total overdues and further stated that on receipt of such amount, the proposal for deferment of auction under SARFAESI Act will be considered. In the light of communication, dated 06.06.2015, it cannot be said that the respondents have not considered the representation of petitioners dated 27.05.2015.

5. With regard to the other relief projected by the petitioner to defer the auction of residential house, as it is not in dispute that the said property is one of the collateral securities for the loan amount obtained by the petitioner, in the absence of any legal flaw, we are of the view that the petitioner is not entitled for such a direction only on the ground that the same is used for residential purpose.

6. For the aforesaid reasons, the writ petition is devoid of merit and it is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

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**R. SUBHASH REDDY, J**

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**A.SHANKAR NARAYANA, J**

15<sup>th</sup> June 2015

ajr