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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**30.06.2016**

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

&

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(PD)(MD)No.1323 of 2016 & C.M.P(MD)No.6329 of 2016

1.C.Periyasamy
2.P.Gandhimathi : Petitioners/Petitioners/Applicants

-Vs-

1.The Authorised Officer,
Indian Bank, Karur Branch,
No.997, Mohanram Plaza,
Karur-639 002.

2.The Branch Manager,
Indian Bank,
Karur Branch,
No.997, Mohanram Plaza,
Karur-639 002. :Respondents/Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the portion of the order insofar as it imposes conditions on the petitioners in Order dated 28.03.2016 made in I.A.No.615 of 2016 in S.A.No.117 of 2016 on the file of the Debt Recovery Tribunal, Madurai.

For Petitioner :No Appearance

O R D E R

(Order of the Court was delivered by **NOOTY.RAMAMOHANA RAO,J.**)

None appears for the petitioners when the matter is called and taken up. The petitioners are also not present when their names are called.

2. The petitioners have approached the Debts Recovery Tribunal, Coimbatore, by moving a Securitization Appeal No.117 of 2016. In that Securitization Appeal No.117 of 2016 they moved I.A.No.615 of 2016, seeking stay of all further proceedings pursuant to the sale notice dated 26.02.2016, published by the

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respondents on behalf of the Indian Bank, fixing the sale of secured asset on 30.03.2016. In that I.A a limited conditional order is passed directing the Bank not to confirm the sale till 31.05.2016, subject to payment of Rs.20,00,000/- on or before 28.04.2016 as first installment and another sum of Rs.20,00,000/- on or before 30.05.2016 as second installment. It is also made clear that in the event of failure to pay any of the above installments, the interim injunction granted not to confirm the sale till 31.05.2016, shall stand vacated automatically, and thereafter, the respondents Bank would be at liberty to confirm the sale.

3. In this revision what has been pointed out is that the order has been passed by the Debts Recovery Tribunal, without going into the merits of the case. We are at a loss to appreciate the contention. The reason being, at the interlocutory stage what is required to be taken into account and consideration is a *prima facie* case on merits and assessment of balance of convenience between the two parties to the lis. It is not in doubt that the petitioners availed certain financial assistance from the Indian Bank and that Debt has not been properly cleared resulting in the classification of the Debt as Non Performing Asset (NPA) and that the demand notice raised by the respondents Bank under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) has not produced desired result and consequently the Bank has initiated necessary action under the SARFAESI by invoking Section 13(4) of the said Act, which enables the secured creditor to sell away the property for the realisation of the debt. Therefore, the balance of convenience of the borrower is on one hand and the balance of convenience lying between the borrower and the secured creditor is on the other. What is required to be assessed is whether the borrower is entitled to save the secured asset from being sold as he perceives that a sale by public auction method resorted to by the bankers would not fetch true market value prevailing generally for such properties. But, at the same time, the secured creditor shall not be left in lurch without having recourse to realise the debt due from the borrower. Therefore, we are of the considered opinion that the Debts Recovery Tribunal has rightly assessed the balance of convenience lying in the matter between the parties, whereby it directed the petitioners to deposit a sum of Rs.40,00,000/- in two installments. In fact, when we look at the possession notice drawn by the Bank in terms of Section 8(6) of SARFAESI, we realise that the petitioners had availed three different loans and the amount outstanding in those accounts was to the tune of Rs.41,98,617, 42,95,233, 28,28,331 & 65,72,162/-. Therefore, in our opinion, the assessment made by the Debts Recovery Tribunal, Coimbatore, while passing the order in I.A.No.615 of 2016, is fair and proper and does not warrant any interference at our ends. Hence, the Civil Revision Petition is

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dismissed as lacking any merits. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Authorised Officer,
Indian Bank,
Karur Branch,
No.997, Mohanram Plaza,
Karur-639 002.

2.The Branch Manager,
Indian Bank,
Karur Branch,
No.997, Mohanram Plaza,
Karur-639 002.

3.The Debts Recovery Tribunal,
Madurai

+1cc to Mr.S.GOKUL RAJ,Advocate Sr.No.34804

GSR
AA/DB/14.07.2016/3p-5c

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