THE HON'BLE SRI JUSTICE R.KANTHA RAO
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.12469 of 2016

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

The petitioners are the borrowers under Section 2(1)(f) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'). Having availed the financial assistance from respondent-Bank, they committed default in liquidating the debt, the account was classified as Non-Performing Asset (NPA) under Section 2(1)(o) of the Act and the respondent-bank initiated securitization measures. After issuance of demand notice under Section 13(2) of the Act demanding to pay the debt within 60 days and on failure to pay the same, the Bank issued possession notice under Section 13(4) of the Act.

2) It is one of the contentions of the petitioners that they made a representation to the Bank under Section 13(3) of the Act and the Bank is supposed to dispose of the representation/objections by considering or rejecting within 15 days as contemplated by Section 13(3) of the Act and without that the Bank issued possession notice under Section 13(4) of the Act. There from, the petitioners maintained S.A. No.68 of 2016 before the Debt Recovery Tribunal, Visakhapatnam (for short, 'DRT')and also moved an interim application in I.A. No.59 of 2016 and the DRT passed the interim order dated 22.03.2016 subject to condition of the petitioners depositing Rs.6.00 crores, out of the total liability of about Rs.28.00 crores, and out of Rs.6.00 crores, ordered to be paid Rs.2.00 crores on or before 11.03.2016 and the balance Rs.4.00 crores to be paid by 15.04.2016.

3) It is the submission of the learned counsel for the petitioners/borrowers that they paid total Rs.4.00 crores out of Rs.6.00 crores and they could not pay remaining Rs.2.00 crores as ordered by the DRT. It is also further submission that they made an application for extension of the

time before the DRT and it is still pending and there are no sittings of the DRT and there is a boycott by the Advocates in Calcutta who is the regular officer acting as FAC in-charge for DRT, Visakhapatnam.

4) It is in the factual scenario, they moved this Court by this writ petition for extension of time beyond 15.04.2016 fixed by the DRT so as to enable them to pay the balance amount of Rs.2.00 crores. In the mean time for the direction of the Tribunal not adhered to by the borrowers, the Bank proceeded further under the Act and brought the property for sale. It is the submission that pursuant to the e-auction notice fixing the auction, the bid was knocked out in favour of the highest bidder who deposited not only 25% but also remaining 75% and sale certificate is executed but for registration of the sale certificate and transfer of the property (secured interest) and delivery of possession.

5) Needless to say from the wording of Section 13(8) of the Act and also from the expression of the Apex Court in ***Manoharlal*** (AIR 1971 SC 310) the debtor got a right to liquidate the mortgage debt till the secured asset brought to sale and is transferred fully in favour of the auction purchaser. From the factual matrix submitted above, there is no transfer of the asset in favour of the auction purchaser by registration of the sale certificate and delivery of the property. In the meantime, in pursuance of the right of the debtor, when the debtor want to pay and because the S.A No.68 of 2016 regarding the procedure adopted is liable to be faulted or not is still pending, to subserve the ends of justice, instead of keeping the writ petition admitted and pending, same is disposed of by the following equitable order.

6) In addition to Rs.2.00 crores to be paid on or before 15.04.2016 as per the directions of the DRT, the petitioners also have to pay the public auction bid value of Rs.1.72 crores with incidental expenses and charges that to be ascertained from the Bank to meet it further Rs.2.00 crores total Rs.4.00 crores on or before 15.05.2016. The said Rs.2.00 crores as per the DRT order by extending one month time and also Rs.2.00 crores i.e., to represent the value of the bid amount so that the auction purchaser is entitled

the amount with interest not exceeding 9% p.a. to be refunded by the secured creditor with securisation incidental expenses and charges and if any balance remaining from out of the deposited amount, that shall be adjusted to the loan account. Any failure in complying or payment of the said amount of Rs.4.00 crores by virtue of this order on or before 15.05.2016, the Bank is entitled to register the sale certificate by confirming the sale in favour of the highest bidder. No doubt anything is subject to the result of S.A. No.68 of 2016 on the file of DRT. It is needless to observe in this context, the DRT shall make every endeavour to dispose of the SA within three months.

7) With the above observations, this writ petition is disposed of. No costs. Consequently, miscellaneous petitions, if any shall stand closed. No costs.

R.KANTHA RAO, J

Dr.B.SIVA SANKARA RAO, J

26-04-2016
Ksh