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

WRIT PETITION No.12460 OF 2016

ORDER: *(Per Hon'ble Dr. Justice B. Siva Sankara Rao)*

Heard Sri K.R. Sasidharan Nair, learned counsel for the petitioners, and Sri Rakesh Heda, learned counsel for the 2nd respondent – Bank and perused the material on record.

2. The petitioners are borrowers, as defined in Section 2 (1) (f) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), having availed the financial assistance from the 2nd respondent – Secured Creditor Bank, committed default in payments and the account was thereby classified as a non-performing asset as defined in Section 2 (1) (o) of the Act. The Bank initiated securitization measures for recovery by sale of the secured asset. After Section 13 (2) of the Act demand notice with sixty days time to pay and for failure, followed by possession notice under Section 13 (4) of the Act, the Bank with thirty days time issued and published sale notice to sell the security interest by e-auction as per Rules 8 (6) read with 9 (1) of the Security Interest (Enforcement) Rules, 2002.

3. This Writ Petition is filed questioning said action of the 2nd respondent – Bank in issuing the notice dated 17.03.2016 of Intended Sale by e-auction fixed to conduct on 21.04.2016.

4. Learned counsel for the petitioners though raised

several contentions that are repelled by the counsel for the Bank ultimately submits that if breathing time is provided further reasonably, the petitioners are anxious to liquidate the entire loan amount of Rs.8,45,974/- as on 31.10.2015 together with subsequent interest and the charges incurred for securitization measures to save their valuable property pursuant to their right to protect the same.

5. Having regard to the facts and circumstances supra, the Writ Petition is disposed of directing the petitioners to deposit Rs.3,00,000/- within a period of one month from today i.e., on or before 19.05.2016, and the remaining amount in three equal monthly installments of 19.06.2016, 19.07.2016 and 19.08.2016. In the meantime, the 2nd respondent – Bank can proceed to conduct sale as part of the securitization measures, however, in the event of sale knocked in favour of the highest bidder, but for receiving 25% of the amount from the auction purchaser, the 2nd respondent - Bank shall not collect the remaining balance amount of 75% and also not to transfer the property by issuing sale certificate and delivery of possession.
If the petitioners fail to pay the said amount as stipulated even of the first installment by 19.06.2016, the 2nd respondent – Bank without any further reference to this Court, is at liberty to proceed further in accordance with law, including to confirm the sale, deliver possession and issue sale certificate. There shall be no order as to costs.

The Miscellaneous Petition, if any, pending in this Writ Petition shall stand closed.

JUSTICE R. KANTHA RAO

Dr. JUSTICE B. SIVA SANKARA RAO

Date:18.04.2016
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