HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25483 OF 2006

ORDER:

Heard learned counsel for the petitioners. There is no representation on behalf of the respondents inspite of several adjournments.

The present Writ Petition came to be filed seeking a direction to the respondents to accept the installments @ Rs.7,100/- per month offered by the petitioners till the lawful dues under the mortgage account No.10 of the deceased Appa Rao are cleared with the respondents Bank.

The averments in the affidavit filed in support of the writ petition are as under:

The second respondent granted personal loan of Rs.3,00,000/- to late Appa Rao, under Bank's Mortgage Loan Scheme on 14.08.2002, which has to be repaid in 60 monthly installments at Rs.7,100/- per month. As per the communication dated 06.02.2004, received from the second respondent, 9 installments amounting to Rs.62,600/- were paid by the said date and that about 8 installments to the tune of Rs.58,100/- are due. The balance due amount of loan as on 01.01.2004 was Rs.2,95,501/-. It is further averred that the said Appa Rao in whose favour the loan was granted, died in the month of January, 2004. Thereafter, the petitioners, who are the legal heirs of Appa Rao, received another communication dated 18.08.2006 stating that an amount of Rs.2,75,601/- is over due towards the Bank as on the said date. A notice under the provision of Securitization Act, 2002 was issued to the petitioners stating that the first petitioner along with her deceased husband availed the loan jointly and the total dues payable under the mortgage account is Rs.3,89,865/-. A reply is said to have been sent by the petitioners on 01.11.2006 stating that they were not aware as to whether late Appa Rao executed any mortgage deed in favour of the bank and further stated that even after the death of the said Appa Rao, they paid an amount of Rs.20,000/- to the Bank against the said loan account. Having regard to the difficulties faced by them, the petitioners took time for payment of remaining installments @ Rs.5,000/- per month, but the first respondent sent a reply dated 07.11.2006 rejecting the offer made by the petitioners to pay monthly installments @ Rs.5,000/-. However, the second respondent asked the petitioner to give a representation seeking payment @ Rs.10,000/- per month on getting suitable employment to the second petitioner and accordingly the second petitioner submitted a letter dated 22.11.2006. After the death of Appa Rao, the third petitioner was given compassionate appointment in the department of Agriculture, wherein he was getting salary of Rs.5,800/- per month and the first petitioner was getting pension of Rs.5,000/- per month. In view of the pressure from the Bank, the petitioners agreed to pay installments @ Rs.7,100/- per month. The rejection of the said offer lead to filing of this Writ Petition.

By an order dated 08.12.2006, this Court while issuing notice before admission ordered interim stay of dispossession of the petitioners from the house in question for a period of two weeks from that day. On 26.12.2006 this Court ordered interim stay of dispossession of the petitioners from the house in question until further orders subject to the condition that the petitioners deposits a sum of Rs.25,000/- on or before 18.01.2007 and continue to deposit the installments @ Rs.7,200/- per month.

A counter came to be filed by the second respondent disputing the averments made in the affidavit filed in support of the Writ Petition. It is stated that the petitioners' loan account has become a non performing asset on 31.03.2004 and as such there is no illegality in initiating proceedings under Section 13(2) of the SRFAESI Act. Hence a demand noticed dated 22.09.2006 was issued calling upon the petitioner to repay the total amounts due along with interest, within a period of 60 days, failing which the second respondent was permitted to take possession of the secured property. Inspite of such notice, the petitioner failed to repay the amounts due. It is further stated that the personal problems cannot be taken into consideration while giving time for payment of the amount and hence the Bank had to take every possible legal action for ensuring the recovery of the outstanding due from the defaulting borrowers.

As stated earlier, there was no representation on behalf of the respondents. Learned counsel for the petitioner submits that subsequent to filing of the Writ Petition, there was a one time settlement with the Bank. But however, no document is placed before the Court to show the said settlement.

In view of the interim orders of this Court, in directing the petitioners to pay amount of Rs.7,200/- per month and having regard to the circumstances of the case, the Writ Petition is disposed of with a direction that if there is one time settlement as contended, the petitioners shall pay the amount as agreed upon at the time of settlement. If there is no one time settlement, the petitioners shall pay the amount as directed by this Court while granting interim order till entire due amount including the interest, if any, is recovered. In default of payment of the amount due, the Bank is at liberty to take steps, in accordance with law. No costs.

Consequently, the Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

28.01.2016
vhb