HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE R.KANTHA RAO

W.P.No.15815 of 2016

JUDGMENT: (*Per Hon'ble Sri Justice V.Ramasubramanian*)

The petitioner has come up with the writ petition seeking a Writ of Mandamus to declare the initiation of proceedings by the respondent-Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'the Act') as arbitrary.

Heard learned counsel appearing for the petitioner and Sri B.S.Prasad learned Standing Counsel appearing for the respondent-Bank.

The petitioner is only an agreement holder for the purchase of property which was already under mortgage to the first respondent-Bank. The Notice under Section 13 (2) of the Act was issued on 2.6.2015 and the petitioner entered into an agreement with the mortgager only on 14.5.2015.

When possession was attempted to be taken, the petitioner approached the Debts Recovery Tribunal and filed S.A.No.81 of 2016 in which the Tribunal passed the conditional order which reads as follows:

> "This is on record and admitted by the applicant's counsel that the vendor of the said flat (respondent No.2) has earlier mortgaged the said

> flat in favour of the Bank. Therefore, if any right or interest as claimed by the Applicant has been created, it is subsequent to mortgage, therefore applicant cannot claim any priority.
>
> On the basis of agreement of possession which is executed by respondent No.2 on 15th September, 2015 on a stamp paper of Rs.100/- and also on the basis of their possession and occupancy on the flat, they may approach the respondent bank and submit proposal to pay the entire dues against respondent No.2 who is/was proposed vendor of the applicant and also the borrower and mortgagor. Applicant should also give an undertaking that on and after full payment of secured debt (secured by the said flat), the possession may be handed over to the applicant the possession has been taken by the respondent Bank from the applicant. Applicant should also indemnify the respondent bank from all claims and all litigation, if any, initiated by respondent No.2 (vendor of applicant/mortgagor) against the respondent bank and the same shall be defended by the applicant. On such undertaking and indemnity and also on receipt of entire dues from the applicant the respondent bank may handover back the possession of the flat to the applicant from whom the property has been taken into possession.
>
> The above liberty is given to the applicant only for thirty days. If he fails to pay the dues within thirty days, and comply with other formalities, respondent bank is at liberty to proceed in the matter as per law/rules.
>
> Respondent Bank directed to allow applicants to take out the personal goods of the applicants kept inside the flat on any working day on request of the applicant."

Without challenging the said order, the petitioner has come up with the above writ petition merely seeking extension of time for making payment. This is in view of the fact that the Debts Recovery Tribunal is non-functional.

Therefore, the Writ Petition is disposed of granting extension of time to the petitioner up to 31.5.2016 to make payment as per the order of the Debts Recovery Tribunal. Till then, the respondent shall not take any coercive action. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE V.RAMASUBRAMANIAN

JUSTICE R.KANTHA RAO

29th April, 2016
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