THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

<u>WRIT PETITION No. 38720 OF 2015</u>

<u>O R D E R:</u> ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

On 02.12.2015, a Division Bench of this Court directed interim stay of all further proceedings subject to the condition of the writ petitioner depositing a sum of Rs.50 lacs within a period of four weeks with a default clause that if the petitioner has not deposited the said amount within the stipulated time, it would be open to the 1st respondent Bank of Baroda to take further steps without reference to the pendency of the proceedings before this Court. When W.P.M.P.No. 55524 of 2015 was moved seeking extension of time to comply with the abovesaid order, entertaining that Application, another order was passed on 04.01.2016 extending the time for complying with the said order by a further period of four weeks. Once again, the default clause has been incorporated. Two months thereafter, now, the petitioner still urges that we must grant it time for complying with this order.

In the given circumstances, we are not inclined to show further indulgence, in view of the legal regime contained under Section 13 read with Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. No legal infirmity has been pointed out in the action initiated by the 1st respondent bank under the SARFAESI Act. We are also satisfied that the petitioner herein answers the description of 'borrower', 'default' committed by it and 'secured asset' created by it as defined in clauses (f), (j) and (zc) of sub-section (1) of Section 2 of the Act and the 1st respondent bank answers the description of 'bank' as defined in Section 2(1)(c) of the Act and that it is entitled under Section 13 of the said Act to take securitization measures. Therefore, there is nothing that we can do in the matter.

It will also be appropriate to notice that in the instant case, the notice under sub-section (2) of Section 13 of the SARFAESI Act has been delivered nearly 10 months back on the petitioner on 14.05.2015, pointing out that the outstanding due was a little more than Rs.1.78 crores as of 31.12.2014. Nearly another 15 months time has elapsed thereafter and consequently, the overdue amount to the bank would have crossed Rs. 2 crores. When the Court has shown so much of indulgence by directing the petitioner to deposit nearly one-fourth of the overdue amount i.e. Rs. 50 lacs, even that amount has not been paid by the petitioner. Though the SARFAESI Act and the Rules made there under have not left any discretion in the hands of this Court for it to exercise, but nonetheless, more with a view to allow a defaulting borrower to protect his property from going under public auction, Courts have been showing indulgence. But when such indulgence was not producing the desired result, there is no way the Court can come to the rescue of a party.

For these set of circumstances, having found that there is no merit in this Writ Petition, while dismissing the same without costs, we make it very clear that if the petitioner does not liquidate the liability by 29.03.2016, it shall be open to the 1st respondent bank to take measures, which it has initiated under Section 13 of the Act to their logical conclusion, acting strictly in accordance with law.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

04th March 2016

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