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

WRIT PETITION No. 5984 OF 2016

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

Heard Sri B.S. Prasad, learned Standing Counsel for the 1st respondent bank.

Though this Writ Petition is instituted challenging the notice delivered in terms of and in accordance with Rule 8 of the Security Interest (Enforcement) Rules, 2002 disclosing that the possession of the secured asset has been taken over by the respondent bank, but nonetheless, in view of the alternative submissions made by the learned Senior Counsel appearing for the writ petitioner, we need not traverse all the facts in great detail. Suffice it to notice that the writ petitioner, a small-time entrepreneur, has availed certain financial assistance from the 1st respondent State Bank of India, which securely answers the description of 'bank' in terms of Section 2(1)(c) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and committed default in repayment of the loan. Consequently, the loan account has been declared as a 'non-performing asset' on 26.06.2015. Three days thereafter, a demand notice under sub-section (2) of Section 13 of the aforesaid Act has been shot on the petitioner on 29.06.2015 demanding it to liquidate the outstanding liability of a little more than Rs.31.81 lacs.

It is represented before us that with the permission and after due negotiations with the bank, the petitioner somehow secured a purchaser, on its own, for one of the secured assets, namely a godown and the sale proceeds realized to the tune of Rs.11.99 lacs have been deposited to the credit of the loan account with the 1st respondent bank, which fact has also been acknowledged by the 1st respondent bank in the impugned notice itself. Notwithstanding this deposit of

Rs.11.99 lacs to the loan account, the outstanding liability as of 04.02.2016 is still standing at Rs.21.35 lacs together with interest to be calculated with effect from 27.06.2015. In view of this huge outstanding liability, measures are taken under sub-section (4) of Section 13 of the SARFAESI Act by the respondent bank by taking over the possession of the secured asset.

Now the suggestion that has come from the learned counsel for the petitioner is that the petitioner will deposit a further sum of Rs. 5 lacs on or before 30.03.2016 with the 1st respondent bank and while retaining the symbolic possession of the secured asset with the 1st respondent bank if it is permitted to carry on its business activity there from, it would be liquidating the entire liability latest by 15.07.2016.

Keeping in view the status of the writ petitioner as a small-time industrial entrepreneur struggling to make going good and also taking into consideration the *bona fide* conduct exhibited by it by way of securing a private purchaser for liquidating one of the secured assets and also depositing the entire sale consideration received in a sum of Rs.11.99 lacs, we dispose of this Writ petition with a direction to the 1st respondent bank not to put the secured asset to sale, if not already done, subject to the following conditions:

1) The petitioner shall deposit a sum of not less than Rs. 5 lacs on or before 30.03.2016 to the loan account. The balance outstanding liability together with the incidental expenses that may have been incurred by the 1st respondent will have to be liquidated by making deposits on month to month basis, but however, the entire liability shall be liquidated latest by 15.07.2016.

2) The writ petitioner shall specifically acknowledge that the symbolic possession of the secured asset is lying with the 1st respondent bank only.

3) Any default in sticking to this schedule by the petitioner will enure to the benefit of the bank to proceed further in the matter without any reference to this Court.

There shall be no order as to costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

26th February 2016

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