THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

<u>WRIT PETITION NO.11520 OF 2014</u>

<u>JUDGMENT</u>: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Heard Sri Zakir Ali Danish on behalf of the learned counsel for the petitioner and Sri K.Suresh Reddy on behalf of the respondent – Axis bank.

This writ petition is instituted challenging the validity of the demand notice dated 23.10.2013 issued under Sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth referred to, for brevity, as 'the Act') by the respondent – bank.

However, in view of the order proposed to be passed by us now, there may not be any necessity to record the facts in great detail.

The petitioner has availed certain financial assistance from the respondent – bank and then committed default in paying the equated monthly installments, that made the loan account as 'non-performing asset'. Consequently, the respondent – bank has issued the demand notice under Sub-section (2) of Section 13 of the Act demanding the petitioner to liquidate the entire liability of Rs.22,42,263/- standing as on 23.10.2013 together with interest accrued thereon.

The petitioner having availed certain financial assistance from the respondent – bank answers the definition of borrower as defined in Section 2 (1) (f) of the Act and the respondent – bank answers the definition of bank as defined in Section 2 (1) (c) of the Act. The default committed by the petitioner answers the definition of default as defined in Section 2 (1) (j) of the Act. The expression 'secured asset' means the property on which security interest is created, as per Section 2 (1) (zc) of the Act and the security interest as defined in Section 2 (1) (zf) of the Act means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment etc. Therefore, the property over which the petitioner has created security interest in favour of the respondent – bank, is liable to be proceeded against under Section 13 of the Act. In such circumstances, the notice of demand issued by the respondent – bank on 23.10.2013 being completely in accord with the provisions contained in Section 13 of the Act, no exception need be drawn thereto. The petitioner is now, submits Sri Zakir Ali Danish, anxious to liquidate the liability to the extent of default committed, so that his loan account can be got regularized.

Hence, to make the writ petitioner pay and deposit a sum of not less than Rs.10,00,000/- to the loan account maintained with the respondent – bank, we grant the petitioner time up to 30.04.2016. Thereafter, the petitioner shall also submit a representation proposing as to how he would liquidate the balance liability by rescheduling the loan account. In case, the petitioner commits any default in paying the amount of not less than Rs.10,00,000/- on or before 30.04.2016, and fails to submit representation as to how he proposes to liquidate the balance liability by rescheduling the loan account, the respondent bank would be at liberty to proceed further in the matter by taking up the follow-up action provided under Sub-section (4) of Section 13 of the Act without any further reference to this Court.

Hence, to that extent, the interim order granted by this Court on 16.04.2014 (stay of all further proceedings) shall be deemed to have been dissolved by this order.

With this, the writ petition stands disposed of. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE DR.B.SIVA SANKARA RAO

30.03.2016

Note:
Issue C.C. by 01.04.2016
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