HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.7310 of 2016

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This writ petition is directed against the order passed in Crl.M.P.No.328 of 2015, at the instance of the 2nd respondent/Bank on 22.01.2016 directing the Advocate Commissioner to take possession of the secured asset and return the warrant by 25.02.2016.

The petitioners have raised a term loan with the 2nd respondent/Bank on 15.10.2011 in a sum of Rs.20,00,000/-. But, however, the said loan amount has not been repaid promptly. Consequently, the loan account has become a Non Performing Asset. Hence, measures were taken for securitization by the 2nd respondent/Bank by issuing a demand notice under Sub Section 2 of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') requiring the petitioners herein to liquidate the outstanding liability in a sum of Rs.21,62,685/- as on 23.02.2015. Since the 60 days notice period did not produce the desired result, the 2nd respondent/Bank has taken measures under Sub Section 1 of Section 14 of the Act and accordingly, an order came to be passed on 22.01.2016 in Crl.M.P.No.328 of 2015. It is against this order the present writ petition is filed.

The fact that the petitioners herein answer the description 'borrower' as defined under Section 2(1)(f) of the Act is not in dispute. The 2nd respondent/Bank answers the description of 'Bank' as defined under Section 2(1)(c) of the Act as it is a Banking Company. Similarly, the asset over which mortgage was created by the petitioners herein answers the description of 'financial asset' as defined under Section

2(1)(l) of the Act. It is further not in dispute that the petitioners have committed default in liquidating the liability. As a result, the loan account of the petitioners came to be classified as Non Performing Asset. The notice served under Sub Section 2 of Section 13 of the Act providing 60 days time to the petitioners to liquidate the entire outstanding liability has not been acted upon by the petitioners and no payment whatsoever has been offered to the 2nd respondent/Bank. Consequently, after the expiry of 60 days time period provided for liquidating the liability, the 2nd respondent/Bank has initiated measures under Sub Section 1 of Section 14 of the Act. No exception need be drawn with regard to action initiated by the 2nd respondent/Bank so far. However, learned counsel for the petitioners would urge that if the petitioners are given reasonable time to liquidate the liability, they would like to protect their secured asset instead of allowing it to be sold for a distress value in public auction. Since the petitioners submit that they are very anxious to liquidate the liability in its entirety, we consider that ends of justice would be better served by providing time to the petitioners to deposit a sum of not less Rs.7.5 lakhs on or before 29.03.2016 to the loan account and a further sum of Rs.7.5 lakhs shall be deposited on or before 30.04.2016 and the remaining outstanding amount of liability together with incidental expenses incurred by the 2nd respondent/Bank for undertaking securitization measures shall be cleared by 31.05.2016. Hence, if the possession of the secured asset has not been taken so far by the learned Advocate Commissioner appointed in Crl.M.P.No.328 of 2015, he may not do so till 01.06.2016. If the petitioners clear the entire outstanding liability by 31.05.2016, the necessity to take possession of the secured asset by the advocate commissioner appointed in Crl.M.P.No.328 of 2015 would not simply arise. In case the petitioners commit any default in making the payments as set out supra and within the time limit also specified, then without any further reference to this

Court, the 2nd respondent/Bank is at liberty to proceed further in the matter in accordance with law and realize the debt due from the petitioners including selling by way of public auction the secured asset.

With this observation, this writ petition stands disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE Dr. B.SIVA SANKARA RAO

09.03.2016
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