HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.7753 of 2016

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ORDER: (*per Hon'ble Dr. Justice B.Siva Sankara Rao*)

The petitioner, who is the borrower, as defined under Section 2(1)(f) of the SARFAESI Act, 2002 (for short 'the Act'), availed the financial assistance from the 2nd respondent-secured creditor, as defined under Section 2(1)(zd) of the Act, for house loan, having committed default in adhering to payment schedule and in liquidation of the debt, the account of the petitioner/borrower since classified as non-performing asset, as defined under Section 2(1)(o) of the Act, the bank has initiated securitization measures to recover the debt due by bringing the property for sale.

2. Undoubtedly, Section 13(2) demand notice with 60 days time to pay the debt was issued on 01.08.2015 and the same was served and it is the submission of the learned counsel for the petitioner that he made representation dated 20.01.2016 under Section 13(3) of the Act, though not immediate to receiving of said demand notice, by seeking time of six months to enable to liquidate the entire debt. It is his submission that the bank is supposed to dispose of the representation by giving reply within 15 days, as contemplated by Section 13(3)(A) of the Act, it was not reply. When what is represented is not by any objection to the proceedings on any legal grounds but for seeking time and the non-reply if any in the factual scenario has no ground to raise the same to maintain the writ petition there upon. It is his submission through counsel at this stage there from that he is every making endeavour as really interested to clear the debt to save his residential house, if reasonable time is afforded. Undisputedly, the representation itself is to give six months time that expires by the end of June 2016.

3. Having regard to the facts of the case, there are no grounds to

admit the writ petition, keeping pending with no purpose, but for considering the representation and to sub-serve the ends of justice to pass the following equitable order.

(i) The petitioner is directed to pay a minimum of Rs.6.00 lakhs on or before 31.05.2016; another sum of Rs.6.00 lakhs on or before 30.06.2016, and to pay the remaining balance due on or before 31.07.2016.

(ii) In such an event, the 2nd respondent shall not confirm the sale though they can initiate further securitization measures by taking constructive possession and allowing the petitioner in physical possession under the control of the bank to bring the mortgaged property to sale by auction, fixing the date, however, but for collecting 25% of the bid amount not to collect the remaining 75% amount and not to confirm the sale and not to issue sale certificate and transfer the security interest.

(iii) However, if the petitioner fails to pay even the first installment as stated supra, the 2nd respondent-bank is at liberty to proceed further to dislodge the petitioner and issue sale certificate as per auction sale and transfer title and deliver possession and issue sale certificate without further reference to the court.

4. The writ petition is, accordingly, disposed of. There is no order as to costs. The miscellaneous applications pending if any, in this writ petition stand closed.

R.KANTHA RAO, J

Dr. B. SIVA SANKARA RAO, J

Date: 26.04.2016
BSS

HON'BLE SRI JUSTICE R.KANTHA RAO
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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Writ Petition No.7753 of 2016

(per Hon'ble Dr. Justice B.Siva Sankara Rao)

Date: 26.04.2016

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