THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.32052 OF 2017

ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this writ petition is to declare the action of the respondents, in not giving the petitioners an opportunity to repay the loan as per the equal monthly instalments, as arbitrary and illegal.

Sri Syed Azamathullla, learned counsel for the petitioners, would submit that, while the petitioners have been regularly paying the equal monthly instalments, their financial constraints disabled them from paying the EMI of Rs.11,807/- in its entirety; the petitioners have been paying, each month, lesser amount than what is stipulated as an EMI, and, though they have expressed their readiness to pay the arrears of EMI, the bank is not considering their request despite a written representation being submitted by them in this regard.

It is not in dispute that the petitioners have been paying amounts, lesser than the prescribed EMI instalment, each month. For failure of the petitioners to pay the EMIs on time, and of the stipulated amount, the bank was entitled to proceed against them under the SARFAESI Act, after their account has been declared a non-performing asset. No infirmity in the procedure followed by the respondent bank, in taking action against the petitioners under the SARFAESI Act, has been brought to our notice.

The only request made by Sri Syed Azamathulla, learned counsel for the petitioners, is that the petitioners' request for payment of EMI arrears and for their account to be regularised, has not been favourably considered by the respondent bank.

This Court, in proceedings under Article 226 of the Constitution of India, would exercise its discretion to interfere only if the respondent bank has failed to adhere to the procedure stipulated under the SARFAESI Act, and the Rules made thereunder. Any request for indulgence has to be addressed by the petitioner to the respondent-bank, and not to this Court. As the petitioners have already filed a representation in this regard, we have no reason to doubt that the respondent-bank would give it its due consideration. We, however, see no reason to interfere with the action taken by the respondent-bank in this regard.

The writ petition fails and is, accordingly, dismissed. Miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ

3rd OCTOBER, 2017.

M. GANGA RAO, J

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