

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI**

Writ Petition No.25730 of 2017

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

The validity of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), as amended by Act 44 of 2016, is questioned in this writ petition as being arbitrary and illegal.

The contention of Sri K.V.Seshagiri Rao, learned counsel for the petitioner, is that the amended Section 13(8) of the SARFAESI Act enables the mortgagor to redeem the property on payment of the dues, together with costs, charges and expenses incurred by the secured creditor, at any time before the date of publication of the notice for public auction; and, as the notice for public auction was issued on 25.06.2017, even before the notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules") was dispatched to the petitioner on 03.07.2017 and served on them on 07.07.2017, the petitioner is not in a position to redeem the property.

The petitioner is a borrower and the amount admittedly due from them to the respondent-bank is said to be in excess of Rs.35 crores. Rule 8(6) requires the authorised officer to serve on the borrower a notice of 30 days for sale of the immovable property. Even, according to the petitioner, the notice under Rule 8(6) of the Rules was served on them on 07.07.2017. The mortgaged property is being put to sale today i.e 09.08.2017 which is more than a month after the notice, under Rule 8(6) of the Rules, was served on the petitioner on 07.07.2017.

The embargo under Rule 9(1) of the Rules is for sale of the immovable property before expiry of 30 days from the date on which the notice of sale has been published in the newspaper or has been served on the borrower. The notice under Rule 9(1) was published in newspaper on 25.06.2017, and the subject property is sought to be sold more than a month thereafter on 09.08.2017. The petitioner's contention, however, is that, since Section 13(8) of the SARFAESI Act enables the borrower to redeem the property only before the date of publication of the notice for public auction which is 25.06.2017, and as the Rule 8(6) notice itself was served on them thereafter on 07.07.2017, the petitioner is disabled from redeeming the property, as the date of publication of the notice under Rule 9(1) was even prior to receipt of the Rule 8(6) notice by them.

When we asked Sri K.V.Seshagiri Rao, learned counsel for the petitioner, whether the petitioner was ready to redeem the subject property even today, learned counsel submits that the petitioner is ready and willing to pay 30% of the value of the subject property, as reflected in the sale notice, within one month from today.

It is evident, therefore, that, though the prescribed one month period has elapsed after receipt of the Rule 8(6) notice by them, the petitioner is not willing to redeem the subject property even today i.e 09.08.2017. The validity of a statutory provision can only be questioned on two grounds viz, (i) for violation of the fundamental rights; and (ii) on the ground of lack of legislative competence. Neither of these two conditions are attracted in the present case. We see no reason, therefore, to entertain this writ petition wherein the validity of Section 13(8) of the SARFAESI Act is under challenge. It is evident that

the petitioner is only seeking deferment of the sale of the subject property on untenable grounds.

The Writ Petition, as filed, is wholly devoid of merits and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

09th August, 2017
JSU



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Date: 09.08.2017

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