

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No. 7397 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

This writ petition was filed assailing the possession notice dated 18.01.2018 issued by the Canara Bank under Section 13 (4) the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002.

Sri Dishit Bhattacharjee, learned counsel for the Canara Bank, would inform this Court that the Bank thereafter initiated proceedings under Section 14 of the SARFAESI Act before the learned Chief Judicial Magistrate-cum-Principal Senior Civil Judge, Nellore, SPSR Nellore District, in CrI.M.P.No.23 of 2018 and by order dated 07.02.2018 passed therein, an Advocate Commissioner was appointed to take actual physical possession of the secured asset.

Sri Y.V. Srinivasan, learned counsel representing Sri Venkateswarlu Sanisety, learned counsel for the petitioner, would inform this Court that given sufficient time, the petitioner would clear its total outstanding dues.

Sri Dishit Bhattacharjee, learned counsel, would state that after issuance of the possession notice dated 18.01.2018, the petitioner firm paid a further sum of Rs.14,00,000/-.

Sri Y.V.Srinivasan, learned counsel, would however dispute this and state that the petitioner firm paid a sum of over Rs.19,00,000/-.

We are not inclined to go into this aspect of the matter.

As the Canara Bank is yet to take concrete measures for realising its dues through sale of the secured asset, we are of the opinion that a

reasonable opportunity may be given to the petitioner to prove its *bonafides* and clear its total outstanding dues.

The writ petition is accordingly disposed of with the following directions:

The petitioner firm shall forthwith ascertain from the Bank as to what are the total outstanding dues as on date, including the interest accrued on the loan amount along with incidental expenses, if any, upto the date of total realization. Upon ascertaining the total outstanding dues as aforestated, the petitioner firm shall deposit 50% of such total outstanding dues within one month from today i.e., on or before 12.04.2018. The balance 50% of the total outstanding dues shall be deposited by the petitioner firm on or before 14.05.2018. In the event of default in deposit of either of the aforestated instalments, this order shall stand withdrawn and the writ petition shall stand dismissed. However, till the expiry of the date fixed for deposit of the first instalment, the Canara Bank shall stay its hand and shall not give effect to the order secured by it under Section 14 of the SARFAESI Act against the petitioner firm. In the event the petitioner firm makes the first deposit, the Canara Bank shall forbear from giving effect to the said order till expiry of the date fixed for deposit of the second instalment. It is made clear that the petitioner firm would not be entitled to seek any extension of time and shall also not seek any further indulgence from this Court.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

Date: 12.03.2018

JUSTICE SANJAY KUMAR

JUSTICE D.V.S.S.SOMAYAJULU

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