IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

<u>Writ Petition No.42727 of 2018</u>

03-12-2018

Between:

Parupudi Naga Venkata Lakshmi, W/o Veeraswamy Sastry, Hindu, aged 48 years, R/o D.No.4-2-60/5/1, Bhupaiah Agraharam, Amalapuram, E.G. District

… Petitioner

And

The Authorised Office, State Bank of India, Amalapuram Branch, East Godavari District and another

… Respondents

! Counsel for the Petitioner : Mr. Mangena Sree Rama Rao

^ Counsel for Respondents : Mr. M. Srikanth Reddy, standing counsel

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

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<u>Writ Petition No.42727 of 2018</u>

<u>ORDER</u>: *(per V. Ramasubramanian,J)*

Challenging a possession notice dated 12-11-2018 issued under Section 13 (4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act, 2002), the petitioner has come up with the above writ petition.

2. When a demand notice was issued on 24-08-2018, the petitioner gave a representation dated 22-10-2018. Immediately, the petitioner came up with a writ petition in W.P.No.40325 of 2018. But, the said writ petition was dismissed as premature. The operative portion of the order dated 09-11-2018 passed in W.P.No.40325 of 2018 reads as follows:

> "3. As against a demand notice, a writ petition is premature. The petitioner has allegedly submitted a reply to the demand notice. Thereafter, the Authorised Officer is obliged to pass orders under Section 13 (3A) of the Securitisation Act. It is only thereafter, that the measures stipulated under Section 13 (4) of the Securitisation Act will be taken. It is only at this stage that the petitioner can have a cause of action to approach the appropriate forum. Today, the writ petition is premature. Hence, it is dismissed."

3. But unfortunately, the bank issued possession notice on 12-11-2018 without passing an order under Section 13 (3A) of the Securitisation Act. Therefore, the petitioner has come back.

4. The contention of Mr. M. Srikanth Reddy, learned standing counsel for the bank is that the representation dated 22-10-2018 did not contain anything except the expression of inability to pay and a prayer for rescheduling of the loan. Therefore, the learned standing counsel contended that there was nothing to consider in the said representation and there was nothing to pass by way of an order under Section 13 (3A) of the Act.

5. But, sub-section (3A) of Section 13 of the Securitisation Act uses two expressions, (i) representation and (ii) objection. A positive obligation is cast upon the bank to give a reply to the said representation or objection. Sub-section (3A) and the proviso thereunder to Section 13 reads as follows:

> *"(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower."*

6. The receipt of the representation dated 22-10-2018 is not disputed by the Bank. The said representation is also made within sixty days as stipulated in Section 13 (2). Therefore, the bank was obliged to consider the representation, even if it be for rescheduling of payments. Sub-section (3A) does not make a distinction between an objection to the demand notice on merits and representation of any other kind. In fact, apart from two expressions "representation" and "objection", sub-section (3A) uses two more expressions which

are correlatable to those expressions. The expression "acceptable" is correlatable to the expression "representation". The other "tenable" is correlatable to the expression "objection". Therefore, however, weak the plea made by the borrower is, he is entitled at least to have a firm "No" as an answer. That is the mandate of sub-section (3A) of Section 13 of the Securitisation Act.

Therefore, the writ petition is allowed, the impugned possession notice is set aside. It will be open to the bank to pass orders and then proceed in accordance with law. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 03-12-2018

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