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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 06.02.2018

\+ W.P. (C) 1102/2018, CM APPL.4599/2018 & 4600/2018

ANITA KHANNA & ORS ..... Petitioners

Through: Mr. Ankit Mangla with Mr. Siddharth Sharma, Advocates.

versus

RESERVE BANK OF INDIA & ANR ..... Respondents

Through: Mr. K.S. Parihar with Mr. H.S. Parihar, Advocates for RBI/R-1.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER

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<u>RAJIV SHAKDHER, J. (ORAL)</u>

1. Issue notice. Mr. K.S. Parihar, Advocate accepts notice on behalf of respondent no.1/RBI. In view of the order that I propose to pass, no notice is required to be issued to the respondent no.2 bank for the moment.

2. In this writ petition, the following substantial prayers have been sought: -

> *a) Issue a writ of mandamus or any other appropriate writ, order of direction, directing the Respondent No.1 to ensure that the Respondent No.2 comply with the mandate of the RBI circular bearing No.DBR. No.BP.BC.2/21.04.048/2015-16 dated 01st July, 2015 issued by the Respondent No.1; and*
> *b) Issue a writ of Certiorari or any other appropriate writ, order of direction declaring the notices dated 03/11/2017 &*

21/11/2017 (hereinafter referred to as the 'impugned notices') issued by the Respondent no.2 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as non-est and void w.e.f. 04/01/2018 on account of failure of the Respondent No.2 to respond to the objections filed by the Petitioners in terms of Section 13 (3-A) of the SARFAESI Act, 2002."

3. The principal grievance of the petitioners is against the respondent no.2 bank.

4. The petitioners are inter alia aggrieved with the manner in which respondent no.2/ bank had proceeded to enforce its rights under the loan agreement by taking recourse to provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act').

5. It is not disputed before me that some amount of money is outstanding against loan taken by the late husband of petitioner no.1. The petitioners are aggrieved, as indicated above, as to the manner in which the respondent no.2 Bank has exercised the rights conferred on it under the Act proceeded to enforce its rights.

6. My attention is drawn to the fact that the respondent no.2 bank had issued two notices under Section 13 (2) of the Act. First notice is dated 3.11.2017 while the second notice is of 21.11.2017.

6.1 Learned counsel has also taken me through the two notices and demonstrated that while the total sum sought to be recovered from the petitioners has increased from Rs.49,57,026.91/- to 49,90,452.61/-, the principal amount has decreased. There are other components to the total sum claimed qua the petitioners in the two notices in respect of which ostensibly there is a variation.

7. Furthermore, counsel for the petitioners says that after the first notice under Section 13 (2) of the Act was issued, the respondent no.2 bank without waiting for the statutory period to get over had its officers visit the mortgaged premises, and who in turn pasted a notice on the subject property which read as follows: -

"This property is in the possession of DCB Bank Limited"

7.1. Apparently, this pasting was carried out by respondent no.2 bank's officers on 17.11.2017.

8. It is not disputed before me that the petitioners have as a matter of fact filed their objections as mandated under the Act. These objections are dated 18.12.2017. Furthermore, counsel for the petitioner also says that a complaint with regard to the conduct of the officers of the respondent no.2 bank has been filed with the Banking Ombudsman. This complaint is dated 19.11.2017. Counsel for the petitioners concedes that the respondent no.2 bank has not yet indicated its decision on the objections filed by the petitioners vis-a-vis Section 13 (2) notices served upon them. I am also informed by the counsel for the petitioners that the Banking Ombudsman has not communicated his decision vis-a-vis the complaint filed with regard to the conduct of the officers of the respondent no.2 bank.

8.1 It is in this context that the petitioners have sought relief in terms of prayer clause (a).

9. Mr. Parihar, who appears for respondent no.1/RBI says that he will look into the matter and, if necessary, issue a suitable communication to respondent no.2 bank to comply with the mandate of RBI's Circular referred to in prayer clause (a).

10. Having heard the counsel for the petitioners and Mr. Parihar, I am presently of the view that the writ is in a sense pre-mature. The respondent no.2 bank has not disposed of the objections filed by the petitioners to the two notices issued under Section 13 (2) of the Act. The objections, once disposed of will perhaps give a right to the petitioners to take access to the appropriate proceedings in law. Furthermore, as noted above it is stated before me that the Banking Ombudsman has not taken any action on the complaint of the petitioners. To be noted, this aspect of the matter is not before me in the sense that there is no prayer made vis-a-vis the inaction of the Banking Ombudsman. Having said so, as indicated above, respondent no.1/ RBI being the regulator of the banking system in the country will ensure that respondent no.2 bank acts in accordance with the directives contained in the aforementioned Circular and other extant guidelines/ circulars issued by it.

11. Accordingly, the writ petition of along with all interlocutory applications is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

FEBRUARY 06, 2018/vikas