

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAHA RAO**

WRIT PETITION No. 786 of 2019

ORDER: (*per V. Ramasubramanian, J*)

The petitioners have come up with the above Writ Petition challenging the measures taken under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), and also the auction sale notice.

2. Heard Mr.J.C.Francis, learned counsel for the petitioners and Mr.E. Madan Mohan Rao, takes notice for the Bank.

3. After the account of the petitioners became a Non-performing Asset, a demand notice under Section 13 (2) of the Act was issued on 07.05.2015. It was followed by a possession notice under Section 13 (4) of the Act.

4. The same was challenged by the petitioners, by way of an appeal under Section 17 of the Act in S.A.No.390 of 2016 before the Debts Recovery Tribunal. In the appeal, the petitioners secured an interim order of protection on 02.09.2016, subject to payment of Rs.25,00,000/- (Rupees twenty five lakhs only). The petitioners complied with the conditional order and hence had the benefit of stay through out.

5. It appears that on 09.05.2018, the learned counsel for the Bank produced a memo of compromise. Thereafter, the Debts Recovery Tribunal adjourned the case to 11.06.2018. Unfortunately, the learned counsel for the petitioners was not present on 11.06.2018. Therefore, the appeal was dismissed by the Debts Recovery Tribunal for non-prosecution on 11.06.2018.

6. The petitioners should have been advised to seek restoration of the appeal, especially in the light of the statement made by the bank on 09.05.2018. But, the petitioners were not advised to file an application for restoration.

7. Therefore, the bank has now proceeded to issue an auction sale notice, which the petitioners seek to challenge by way of the present writ petition.

8. We do not know whether the petitioners want to give up their challenge to the possession notice under Section 13 (4) of the Act. If they do so, they may be doing the same at their own peril.

9. But, in the cases of this nature, the appropriate course of action that the petitioners should have adopted is to seek restoration of the appeal that was dismissed for non-prosecution, especially since the petitioners have complied with the conditional order passed by the Debts Recovery Tribunal. Without adopting such a course of action, the petitioners cannot challenge the consequential action of the authorised officer.

10. Therefore, leaving it open to the petitioners to seek restoration of appeal dismissed for non-prosecution, the writ petition is dismissed.

Consequently, miscellaneous petitions if any pending in the Writ Petition shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAHA RAO, J

January 22, 2019

Note: Furnish C.C. of order today itself.

B/o

gkv/mgr

