

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No. 1412 OF 2019

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

Aggrieved by a sale notice published on 29.12.2018 in the Newspaper under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 (for short 'Rules, 2002') and an order passed by the Chief Metropolitan Magistrate, Nampally, Hyderabad, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002'), the petitioners have come up with the above Writ Petition.

2. Heard Sri Vedula Venkata Ramana, learned Senior Counsel for the petitioners.

3. Sri M. Srikanth Reddy, learned Standing Counsel, takes notice for respondent - Bank.

4. The contentions raised by the learned senior counsel for the petitioners are; (i) that without passing an order under Section 13 (3A) of the Act, 2002, the authorized officer proceeded with further measures; (ii) that there was no time gap of thirty (30) days between the date of notice under Rule 8 (6) of the Rules, 2002 and sale notice under Rule 9 (1) of the Rules, 2002; and (iii) that under Section 13 (6)

of the Act, 2002, sale cannot be ordered, without taking physical possession.

5. At the outset, we should point out that the demand notice under Section 13 (2) of the Act, 2002 was issued by the Bank in this case, on 04.05.2018. According to the petitioners, they submitted a reply on 10.06.2018, but no order was passed under Section 13 (3A) of the Act, 2002. However, possession notice was issued on 18.07.2018.

6. Therefore, on the first ground, the petitioners could have approached the Debts Recovery Tribunal by way of an appeal under Section 17 of the Act, 2002. We do not know whether they have already approached the Tribunal or not.

6. Insofar as the second contention is concerned, we fail to understand why the petitioners cannot go to the Debts Recovery Tribunal and raise the very same contention. It is not a case where we would allow the petitioners to by-pass the alternative remedy of appeal.

7. Insofar as the third contention is concerned, Section 13 (6) of the Act, 2002 talks only about the date of vesting of property in the auction purchaser. Section 13 (4) of the Act, 2002 empowers the authorized officer to take possession, even before a sale could take place. The moment an objection/representation to a demand notice

under Section 13 (2) of the Act, 2002, is rejected by way of an order under Section 13 (3A) of the Act, 2002, the authorized officer becomes entitled under Section 13 (4) of the Act, 2002 to take possession. Therefore, it is not correct to say that a sale notice can be issued only after possession is taken.

8. However, leaving it open to the petitioners to agitate their grievance before the Debts Recovery Tribunal, this Writ Petition is dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

January 28, 2019

Note:

Furnish C.C. of order today itself
(B/O.) Gkv/Mgr