

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.3805 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Seeking a declaration that there is no valid and subsisting security interest in a property owned by him and also challenging a notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), the petitioner has come up with the above writ petition.

2. Heard Mr. A.P. Venu Gopal, learned counsel for the petitioner. Smt. V. Dyumani, learned standing counsel, takes notice for the respondents 1 and 2.

3. The reliefs sought by the petitioner in this writ petition are three fold viz. (a) a declaration that there is no valid and subsisting security interest, (b) directing delivery of the original title deeds and (c) stay of further proceedings pursuant to the notice dated 01.02.2019 issued under Section 13(2) of the Act.

4. The grounds, on which the petitioner has come up with the above writ petition seeking the aforesaid reliefs, as articulated by the learned counsel for the petitioner, are (1) that the property was mortgaged for the purpose of a housing loan, but the terms and conditions of the contract were tampered with by granting an additional loan for digging a bore-well, (2) that the bank is *estopped*

from proceeding against the property in question and (3) that the bank has already taken an *ex parte* certificate of recovery from the DRT in OANo.14 of 2018, only as against the third respondent herein and hence, no proceeding can be initiated against the petitioner.

5. We have carefully considered the above. The immediate cause of action for the petitioner to come up before this Court is the issuance of a notice under Section 13(2) of the Act. This Court has repeatedly been holding that a demand notice under Section 13(2) of the Act does not give rise to a cause of action for a person to come up before this Court. The Act contemplates a reply or objections to be made by the persons against whom demand notice is issued. Thereafter, the Act contemplates the Authorized Officer to pass an order under Section 13(3A) of the Act. It is only after the rejection of the representation/objections under Section 13(3A) of the Act that the Authorized Officer is empowered to initiate measures under Section 13(4) of the Act. We have repeatedly held that it is only, at that stage, that a person can go before the appropriate forum to challenge the measures initiated under Section 13(4) of the Act. Therefore, the writ petition is premature insofar as the relief sought relating to the demand notice is concerned.

6. Insofar as the other two reliefs, sought by the petitioner are concerned, the petitioner is actually raising factual disputes. This is not the forum where the petitioner can raise questions of fact. The petitioner claims to have given a reply to the demand notice. If the reply given by the petitioner is rejected and measures are taken under Section 13(4) of the Act, the petitioner can as well approach the

tribunal, at that stage, seeking the first two reliefs that he has sought before this Court. To entertain the writ petition with respect to the first two reliefs, at this stage, would be to put the cart before the horse and to assume jurisdiction that is, primarily, vested with the DRT. Hence, the writ petition is dismissed leaving it open to the petitioner to raise all disputes at the appropriate stage before the tribunal.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 25, 2019
DSK

