HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 4043 of 2019

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

1) Challenging an e-auction notice issued under the Security Interest (Enforcement) Rules, 2002 (for short "the Rules"), the borrowers, who have taken a housing loan as well as a cash credit facility have come up with the above writ petition.

2) Heard Mr.N.V.Subba Raju, learned counsel for the petitioners and Smt.V.Dyumani, learned Standing Counsel for the bank.

3) It appears that the sale notice was issued on 24.09.2018 and the auction was held on 14.11.2018. Though the auction materialized sale could not be confirmed due to a collateral proceedings filed before the Debts Recovery Tribunal at the instance of the tenant. Despite lapse of four months, the sale could not be confirmed and the highest bidder is not willing to pursue the matter.

4) Be that as it may, the petitioners have availed two loans. While the housing loan taken in a sum of Rs.30.00 lakhs is being serviced promptly, the cash credit facility has become a non-performing asset. It is stated that the amount due under the cash credit facility is a little over Rs.16.00 lakhs. The bank has already taken physical possession of the property on 20.02.2019.

5) In the light of the fact that the housing loan is being serviced promptly, the petitioners have made a solemn declaration in para No.6

of the affidavit in support of the writ petition that they are ready and willing to pay the entire claim of the bank within 30 days. Since the housing loan is being serviced promptly and since the measures taken under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act") relate to the cash credit facility, a workable arrangement can be made in the light of the undertaking given by the petitioners. Therefore, the Writ Petition is disposed of to the following effect.

(1) If the petitioners make payment of the entire amount due under the cash credit facility within four weeks from the date of receipt of a copy of this order, the petitioners may be put back to possession.

(2) If the petitioners continue to service the housing loan promptly, the account shall be treated as having been regularized.

(3) If the petitioners fail to comply with these conditions, it will be open to the bank to proceed afresh in accordance with law.

6) Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

March 6, 2019
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WRIT PETITION No. 4043 of 2019

Date: 06.03.2019

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