

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

Writ Petition No.5501 of 2019

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

The petitioners have come up with the above Writ Petition, challenging the taking over of actual physical possession of their house property in a gated community called 'Rolling Hills' at Gachibowli, pursuant to an Order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act, 2002').

2. Heard Mr.C.Hanumantha Rao, learned Counsel for the petitioners, and Mr.Srinivasa Rao, learned Counsel for the respondent/Bank.

3. When the case came up for *admission* on 19.03.2019, we passed an interim order, which captures the factual details as are sufficient for the disposal of this Writ Petition. Hence the Order passed on 19.03.2019 is extracted as follows:-

“Mr.Srinivasa Rao, learned Counsel takes notice for the respondents/Bank. Mr.Narayana Reddy, learned Counsel represents him.

The case is a combination of a housing loan, bank guarantees and secured overdraft facilities. It appears that the respondents have taken possession of the house property.

Even according to the petitioner, a total amount of nearly Rs.6.5 crores is due, though according to the Bank, an amount of more than Rs.8 crores is dues.

Therefore, the petitioner will have to pay some part of the money, if he wants to take back possession of his house property.

The only redeeming feature in this case is there is a housing loan and the petitioner is out of possession of the house. Otherwise, we would have send the petitioner to Debts Recovery Tribunal.

In the light of the above, there will be an interim order directing the Bank to re-deliver physical possession, however retaining symbolic possession with them, if the petitioner pays a sum of Rs.80,00,000/- (Rupees eighty lakhs only), which approximately represents 20 months EMIs., on or before 08.04.2019. If the petitioner pays this money, the petitioner may be entitled to physical possession with the legal and symbolic possession remaining with the Bank. If the petitioner fails to comply with this Order, the Bank need not hand over the possession.

Post on 09.04.2019.”

4. Pursuant to the aforesaid Order, the petitioners claim to have made payment of a sum of Rs.80,00,000/- (Rupees eighty lakhs only). But, according to the Bank, the cheques towards payment of this sum of Rs.80,00,000/- were handed over only at 06.45 p.m., on 08.04.2019, and that too with a request not to present it until 10.04.2019. The counter filed by the Bank precedes on the footing that when the Bank deposited the cheques on 09.04.2019, the petitioners arranged funds and enabled the Bank to have the amount on 10.04.2019. Therefore, it is the contention of the Bank that the conditional order was not complied within the time stipulated.

5. But we do not think that these small discrepancies, even if true, should stand in the way. The fact that the sum of

Rs.80,00,000/- has now been paid, is not in dispute. As we have pointed out earlier, it is a combination of housing loan, bank guarantees and the secured overdraft facilities. The petitioners were dispossessed from their house property in a gated community. This dispossession has now fetched the Bank a sum of Rs.80,00,000/-. What is now left is about Rs.3.67 crores towards secured overdraft, bank guarantee and the vehicle loans. In other words, nearly 20% of the dues have now been recovered.

6. Therefore, the Writ Petition is disposed of directing the Bank to handover physical possession of the house property of the petitioners forthwith, the Bank retaining symbolic possession. The auction proposed to be held, shall stand cancelled in view of this Order. However, if the petitioners fail to make payment of the future EMIs., for two consecutive months, it is open to the Bank to initiate appropriate action. It is needless to say that if the petitioners are prompt in payment of the EMIs., the Bank will not initiate further action.

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

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

April 15, 2019
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