

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

WRIT PETITION No.7483 of 2019

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

Aggrieved by the dismissal of an application for restoration of an application filed by them under Section 17 of the Securitisation Act, 2002, the borrowers have come up with the above Writ Petition.

Heard Mr.Bala Mohan Reddy, learned Counsel for the petitioner, Mr.M.Srikanth Reddy, learned Counsel for the 2nd respondent-Bank and Mr.N.Harinadh, learned Counsel for the 3rd respondent/auction purchaser.

Aggrieved by the measures taken by the Bank under Section 13 (4) of the SARFAESI Act 2002, the petitioners filed S.A.No.211 of 2015 on the file of the Debts Recovery Tribunal, which later got re-numbered as S.A.No.567 of 2017. It appears that the applications saw several adjournments. Therefore, the Tribunal appears to have imposed costs on 17.09.2018. The case was adjourned to 26.10.2018. But, costs were not paid. On 26.10.2018 neither the petitioners nor their counsel appeared. Finding that they were completely indifferent, the Tribunal dismissed the restoration application. It is against the said order that the petitioners are before us.

It is true that the conduct of the petitioners during the pendency of S.A.No.567 of 2017 leaves much to be desired. But, in an application for restoration, the Court should also look into the

reasons stated in the affidavit. It is seen from the affidavit in support of the restoration application that the Counsel's wife was suspected of having metastasis and the Counsel had to take her for medical check up and treatment. The truth or otherwise of this statement, was not even verified by the Tribunal. If the statement was true, the fault did not lie at the doors of the petitioners.

After all the 3rd respondent, who is an auction purchaser, has got the sale certificate registered and has taken possession. Therefore, we do not know how he will be prejudiced by the restoration of the application.

In view of the above, the Writ Petition is allowed, the impugned order is set aside and the petition for restoration shall stand allowed. The D.R.T. may hear all the parties and decide S.A.No.567 of 2017 on merits in accordance with law, within a period of four months from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions, if any, pending in the Writ Petition shall stand closed. No order as to costs.

V.RAMASUBRAMANIAN, J

P.KESHAVA RAO, J

23.04.2019
Gsn.