

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.11503 OF 2019

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

Challenging a demand notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002'), on the ground that the very classification of the account as a Non-Performing Asset is illegal and contrary to the Reserve Bank of India (RBI) Guidelines, the borrower has come up with the above writ petition.

2. Heard Mr. Ashok Anand Kumar, learned counsel for the petitioner.

3. Admittedly, the petitioner has submitted a reply to the demand notice, dated 17.01.2019, issued under Section 13(2) of the Act, 2002. The objections were submitted on 16.03.2019 and till date neither an order under Section 13(3A) was passed nor measures under section 13(4) were taken. We have been consistently holding that as against a mere demand notice under Section 13(2), there is no cause of auction for a borrower to come up.

4. Assuming that the classification of the account as a Non-performing Asset is contrary to the RBI guidelines, the same is an issue that the petitioner is obliged to raise in response to the demand

notice under Section 13(2). Once the petitioner has raised this objection, the respondents are duty bound to consider the same. The consideration can take two forms. One form is that they may accept it and switch over to the hands off mode. The second form is to reject it and take measures under Section 13(4). Unless and until an order is passed or measures under Section 13(4) are taken, it is only a matter of presumption whether the objections are accepted or rejected. On such presumption, no adjudication can take place.

5. Therefore, leaving it open to the petitioner to come up as and when the cause of action arises, the writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA RAO, J

June 13, 2019
Mgr